An Agreement Among
the Attorneys General of the States of Colorado, Connecticut, District of Columbia, Florida, Idaho, Illinois, Iowa, Kansas, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, South Carolina, Tennessee, Wisconsin and the Pennsylvania Office of Attorney General, Societe Generale, S.A., as defined in Paragraph No. 1 of the Parties Section, below, dated February 22, 2016

This Settlement Agreement is made and entered into this the 22nd day of February 2016 (hereinafter, "Effective Date"), by and between the Attorneys General of the States of Colorado, Connecticut, District of Columbia, Florida, Idaho, Illinois, Iowa, Kansas, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, and Wisconsin and the Pennsylvania Office of Attorney General (hereinafter, "Attorneys General") and Societe Generale, S.A. (hereinafter "Societe Generale").

WHEREAS, the Attorneys General have been conducting an investigation of violations of state and federal antitrust laws, state consumer protection laws and false claims statutes in the marketing, sale and placement of Municipal Derivative Transactions (the "Attorneys General's Investigation");

WHEREAS, the Attorneys General are prepared to claim that Societe Generale and other providers and brokers: (a) unreasonably restrained competition in the marketing, sale and placement of certain Municipal Derivative Transactions by rigging bids, and fixing prices and other terms and conditions with respect to specific Municipal Derivative Transactions; (b) agreed not to bid for certain Municipal Derivative Transactions; or (c) engaged in other anticompetitive, deceptive, unfair or fraudulent conduct, including misrepresenting or omitting material facts, that deprived Issuers of Municipal Bonds of the benefits of competition among the Providers of Municipal Derivative Transactions;

WHEREAS, Societe Generale, without admitting or denying any of the Attorneys General's allegations, is entering into this Settlement Agreement prior to any court making any findings of fact or conclusions of law relating to the Attorneys' General's allegations;

WHEREAS, Societe Generale has cooperated fully with the Attorneys General's Investigation of Municipal Derivatives, has given substantial assistance to the Attorneys General's Investigation, and has agreed to provide appropriate relief for the alleged harm caused;

WHEREAS, the factual allegations that the Attorneys General would make based on the Attorneys General's Investigation are consistent with certain of the allegations set forth in the complaint dated October 9, 2013 filed by plaintiffs the City of Baltimore, Maryland and the Central Bucks School District for themselves and on behalf of each Class Member in *In Re Municipal Derivatives Antitrust Litigation*, MDL No. 1950 (S.D.N.Y.) (hereinafter, the "Operative Class Complaint"), a copy of which is attached as Exhibit 1 to this Settlement Agreement;

WHEREAS, contemporaneously with this Settlement Agreement, Societe Generale and the named plaintiffs, for themselves and on behalf of each Class Member, in the class action styled *In Re Municipal Derivatives Antitrust Litigation*, MDL No. 1950 (S.D.N.Y.), have also resolved their litigation with a settlement agreement (hereinafter, the "Class Settlement Agreement"), a copy of which is attached as Exhibit 2 to this Settlement Agreement;

WHEREAS, the Attorneys General and Class Plaintiffs' Counsel are cooperating to maximize efficiencies in the distribution of the Settlement Fund to injured victims;

WHEREAS, pursuant to this Settlement Agreement, Societe Generale agrees to make payments to certain Municipal Derivative Transactions counterparties through a Settlement Fund established for the benefit of Municipal Derivative Transactions counterparties who are Class Members under the Class Settlement Agreement to resolve claims and potential claims against it;

WHEREAS, Societe Generale has agreed to continue to cooperate fully with the ongoing Attorneys General's Investigation; and

WHEREAS, the Attorneys General find that the relief and other provisions contained in this Settlement Agreement are appropriate and in the public interest.

NOW THEREFORE, in exchange for the mutual obligations described below, Societe Generale and the Attorneys General hereby enter into this Settlement Agreement, and agree as follows:

DEFINITIONS

A. "Attorneys General" shall mean the Attorneys General of Colorado, Connecticut, District of Columbia, Florida, Idaho, Illinois, Iowa, Kansas, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, South Carolina, Tennessee, and Wisconsin, and the Pennsylvania Office of Attorney General. Attorneys General as used in this Settlement Agreement shall include "Participating Attorneys General" as defined below.

B. "Participating Attorneys General" shall mean any Attorney General who elects to participate in this Settlement Agreement by completing the form attached hereto as Exhibit 3 pursuant to Paragraph 24 below.

C. "Authorized Claimant" means any Class Member who, in accordance with the terms of this Settlement Agreement, is entitled to a distribution from the Settlement Fund pursuant to any Distribution Plan or Order of the Court.

D. "Class" has the same meaning as that term is defined in the Class Settlement Agreement.

E. "Class Member" means a person who is a member of the Class as defined in the Class Settlement Agreement.

F. "Court" means the U.S. District Court for the Southern District of New York.

G. "Distribution Plan" means any plan or formula of allocation of the gross Settlement Fund, to be approved by the Court upon notice to the Class, whereby the net Settlement Fund shall in the future be distributed to Authorized Claimants.

H. "Escrow Agent" means the entity designated pursuant to the Class Settlement Agreement.

I. "Municipal Derivative Transactions" means any investment vehicles that government and other entities eligible to issue tax-exempt debt now use or have used at any time since January 1, 1992 to (i) invest the proceeds of tax-exempt debt offerings or (ii) hedge or manage the interest rate risk associated with such debt offerings. These investment vehicles include the following types of transactions: (a) guaranteed investment contracts, or "GICs", both collateralized and uncollateralized; (b) forward purchase, forward supply and forward delivery agreements; (c) repurchase agreements; (d) certificates of deposit, or "CDs," both collateralized and uncollateralized; (e) escrow agreements; (f) swaps; (g) options; (h) "swaptions;" (i) floors; (j) caps; (k) collars; and (l) any financial product encompassed by the description in Paragraphs 58-71of the Corrected Third Consolidated Amended Class Action Complaint (dated October 9, 2013).

J. "Settlement Fund" means the escrow account in which the Escrow Agent maintains the Settlement Amount pursuant to the Class Settlement Agreement after payment thereof by Societe Generale.

K. "Operative Class Complaint" shall mean, the October 9, 2013 complaint filed by plaintiffs the City of Baltimore, Maryland and the Central Bucks School District for themselves and on behalf of each Class Member in *In Re Municipal Derivatives Antitrust Litigation*, MDL No. 1950 (S.D.N.Y.).

L. "Provider(s)" shall mean banks, insurance companies, other financial institutions and any other persons or entities that engage in or offer to engage in the business of buying, selling or entering into Municipal Derivative Transactions.

M. "Broker(s)" shall mean persons, corporations, firms, partnerships and other entities that either: (a) act on behalf of or assist the Municipal Derivative Transactions counterparties in developing requests for bids or proposals, in soliciting bids or proposals and/or in evaluating bids or proposals for Municipal Derivative Transactions; and/or (b) act on behalf of or assist Municipal Derivative Transactions counterparties in locating Providers and/or in negotiating and evaluating Municipal Derivative Transactions. For purposes of this Settlement Agreement, Broker(s) shall also include persons, corporations, firms, partnerships and other entities that advise Municipal Bond Derivative Transactions counterparties or prospective Municipal Derivative Transactions counterparties.

PARTIES

1. Societe Generale shall mean Societe Generale, S.A., a French corporation with its

principal place of business in Paris, France. During the relevant time period alleged in the Operative Class Complaint, Societe Generale, entered into Municipal Derivative Transactions with members of the Class.

2. The Attorneys General and the Participating Attorneys General are the chief law enforcement officers of their respective states and are responsible for enforcing certain laws relating to the claims and allegations in the Operative Class Complaint.

SETTLEMENT PAYMENTS

3. Societe Generale shall pay a total of $26,750,000 in consideration of its settlement with the Class and Attorneys General. Societe Generale's payment consists of the following:

   a. $25,412,500 to be paid into a Settlement Fund in accordance with the terms of the Class Settlement Agreement; and

   b. $1,337,500 as an Additional Payment to be paid to the Attorneys General in accordance with Paragraphs 7 and 8 below.

4. The Additional Payment described in Paragraph 3(b) shall be paid into separate account(s) pursuant to the Attorneys General's instructions.

5. Societe Generale warrants that, as of the Effective Date of this Settlement Agreement, neither it nor any of its affiliates are insolvent, nor shall payment(s) into the Settlement Fund or payment of the Additional Payment render it or any of its affiliates insolvent within the meaning of and/or for purposes of the United States Bankruptcy Code. If a case is commenced against Societe Generale or any of its affiliates under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law and, in the event of a final order by a court of competent jurisdiction determining that payments made pursuant to this Settlement Agreement, and/or any accrued interest or any portion thereof constitute a preference, voidable transfer, fraudulent transfer or other similar transaction, and if, pursuant to such order, payments are not made pursuant to this Settlement Agreement or such payments are returned to Societe Generale, any of its affiliates, or the trustee, receiver or conservator appointed by a court in any proceedings relating to Societe Generale or any of its affiliates, then this Settlement Agreement shall be terminated and cancelled.

6. Payments from the Settlement Fund shall be made to an Authorized Claimant pursuant to a Distribution Plan approved by the Court in accordance with the terms of the Class Settlement Agreement.

ADDITIONAL PAYMENT

7. Within thirty (30) business days of the Effective Date of this Settlement Agreement, Societe Generale shall pay or cause to be paid, by wire transfer,

certified check or other guaranteed funds, pursuant to the instructions of the Attorneys General, the sum of $1,337,500 ("the Additional Payment").

8. The Additional Payment shall be apportioned and used for any one or more of the following purposes, as the Attorneys General, in their sole discretion, see fit: (a) payment of attorneys' fees and expenses; (b) antitrust or consumer protection law enforcement; (c) to cover additional expenses relating to the ongoing Attorneys General's Investigation and any related litigation; (d) for deposit into a state antitrust or consumer protection account (e.g., revolving account, trust account), for use in accordance with the state laws governing that account; (e) for deposit into a fund exclusively dedicated to assisting state attorneys general defray the costs of experts, economists and consultants in multistate antitrust investigations, training, and litigation; or (f) for such other purpose as the Attorneys General deem appropriate, consistent with the various states' laws. This payment is not intended to constitute a civil penalty or a criminal fine.

PROHIBITED CONDUCT

9. Societe Generale, its directors, officers, managers, agents, and employees shall not, directly or indirectly, maintain, solicit, suggest, advocate, discuss or carry out any unlawful combination, conspiracy, agreement, understanding, plan or program with any actual or potential competitor, financial advisor, swap advisor, bidding agent or Broker to (a) submit courtesy, cover or otherwise non-competitive bids for Municipal Derivative Transactions; (b) refrain from bidding on or negotiating for Municipal Derivative Transactions; or (c) coordinate the preparation, submission, content, price and other terms of Municipal Derivative Transactions.

10. Societe Generale, its directors, officers, managers, agents, and employees shall not, in conjunction with the marketing, sale or placement of Municipal Derivative Transactions make material misrepresentations or omit material facts where such omissions render statements misleading to potential counterparties, their agents, brokers or advisors.

BUSINESS REFORMS

11. Within thirty (30) days of the Effective Date of this Settlement Agreement, Societe Generale shall provide the Attorneys General with a copy of its current antitrust compliance policy for its Investment Agreement Unit (a/k/a the Guaranteed Investment Contract Unit).

12. For avoidance of doubt, a breach of paragraphs 9-11 shall not affect the Release set forth in paragraph 21 below.

COOPERATION WITH THE ATTORNEYS GENERAL'S INVESTIGATION

13. Until the date upon which the Attorneys General's Investigation is concluded, Societe

Generale agrees to continue to provide full, complete and prompt cooperation with the ongoing Attorneys General's Investigation, and related proceedings and actions, against any other person, corporation or entity, including but not limited to Societe Generale's former employees. Societe Generale agrees to use its best efforts to secure the full and truthful cooperation of its current officers, directors, employees and agents with the ongoing Attorneys General's Investigation and related proceedings and actions.

14. Cooperation shall include, but not be limited to: (a) producing, voluntarily, without service of subpoena, to the extent permitted by law or regulation, all information, documents or other tangible evidence reasonably requested by the Attorneys General that relates to the Attorneys General's Investigation, subject to the right to withhold information on grounds of privilege, work product or other legal doctrine; (b) preparing, without service of subpoena, to the extent permitted by law or regulation, any compilations or summaries of information or data that the Attorneys General reasonably request that relate to the Attorneys General's Investigation; and (c) if requested by the Attorneys General, working to ensure that Societe Generale's current officers, employees, and agents attend, on reasonable notice, any proceedings (including but not limited to meetings, interviews, hearings, depositions, grand jury proceedings and trial) and, subject to the right to withhold information on grounds of privilege, work product or other legal doctrine, to answer completely, candidly and truthfully any and all inquiries relating to the subject matter of the Attorneys General's Investigation that may be put to such persons by the Attorneys General (or any of them, their deputies, assistants or agents), without the necessity of a subpoena.

15. In the event any documents or information in Societe Generale's possession is withheld or redacted on grounds of privilege, work-product or other legal doctrine, upon the request of the Attorneys General or their designated representative, Societe Generale shall submit a statement in writing indicating: (i) the type of document or information; (ii) the date of the document; (iii) the author and recipient of the document; (iv) the general subject matter of the document or information; (v) the reason for withholding the document; and (vi) the Bates number or range of the withheld document(s). The Attorneys General or their designated representative may initiate a challenge to such claim in any state of federal court where jurisdiction is appropriate and may, subject only to the following sentence, rely on all unprivileged documents or communications theretofore produced or the contents of which have been described by Societe Generale, its officers, directors, employees, or agents, if any. Notwithstanding the foregoing sentence, the Attorneys General or their designated representative may not rely on the fact that Societe Generale may have previously produced materials that may be covered by the attorney-client privilege, work-product or other legal doctrine as a basis for challenging Societe Generale's claim on other unrelated materials.

16. It is agreed that any confidential information provided pursuant to the foregoing Paragraphs shall be covered under the July 16, 2008 Confidentiality Agreement signed by counsel for Societe Generale and Michael E. Cole, Chief, Antitrust Department of the Connecticut Attorney General's Office.

17. Societe Generale agrees not to compromise the integrity or confidentiality of any aspect of the Attorneys General's Investigation or any proceeding or actions relating to the Attorneys General's Investigation, by sharing or disclosing evidence, documents or other information provided to Societe Generale by the Attorneys General or their designated representative without the consent of the Attorneys General or their designated representative. Societe Generale shall give notice to the Attorneys General of any discovery or other request for such information within ten (10) business days of receipt. Nothing herein shall prevent Societe Generale from providing such evidence to other government regulators, self-regulatory organizations, law enforcement agencies or as otherwise required by law or regulation.

18. Societe Generale shall maintain custody of, or make arrangements to have maintained, all available documents and records of Societe Generale related to the Attorneys General's Investigation and covered by the subpoena(s) issued in the Attorneys General's Investigation until the completion of the investigation and any related litigation, including appeals. The Attorneys General or their designated representatives shall consider reasonable requests to destroy categories of documents before such time has expired.

ENFORCEMENT

19. The Attorneys General, jointly or individually, may make such application as appropriate to enforce or interpret the provisions of this Settlement Agreement or, in the alternative, may maintain any action within their legal authority, either civil or criminal, for such other and further relief as any Attorney General may determine in his/her sole discretion is proper and necessary for the enforcement of this Settlement Agreement. Societe Generale consents to the jurisdiction of the courts of the States of Colorado, Connecticut, Florida, Idaho, Illinois, Iowa, Kansas, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, and Wisconsin and the state or commonwealth over which any Participating Attorney General has jurisdiction and only for the purpose of an action brought by one or more of the Attorneys General to enforce the terms of this Settlement Agreement. New York law shall apply in any action brought by one or more of the Attorneys General to enforce the terms of this Settlement Agreement, except to the extent that the issue concerns the confidentiality agreement described in Paragraph 16 above, in which case the law of the relevant state shall apply. The parties recognize that remedies at law for violations of this Settlement Agreement, except for Paragraphs 3, 4 and 7 are inadequate. The parties agree that, in any action to enforce the terms of this Settlement Agreement, except Paragraphs 3, 4 and 7, a court shall have the authority to award equitable relief, including specific performance, and the parties consent to the awarding of such equitable relief including specific performance.

20. This Settlement Agreement may be modified by the mutual agreement of Societe Generale and the Attorneys General. Any such modification shall be in writing and signed by all parties to this Settlement Agreement.

RELEASE BY ATTORNEYS GENERAL AND PARTICIPATING ATTORNEYS GENERAL

21. By his or her execution of this Settlement Agreement or by submission of an Election by an Attorney General to Participate in the Settlement with Societe Generale (Exhibit 3 attached hereto), each Attorney General and Participating Attorney General releases Societe Generale, and all of its successors, assigns, subsidiaries, divisions, groups, affiliates and partnerships, including, without limitation, any of their respective current and former officers, directors and employees (collectively, "AG SG Releasees"), other than past employees on the Investment Agreement Unit or the Guaranteed Investment Contract Unit, from all civil claims, counterclaims, cross claims, setoffs, civil causes of action of any type (whether common law, equitable, statutory, regulatory or administrative, class, individual or otherwise in nature, and whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured), demands, disputes, damages, restitution, whenever incurred, and liabilities of any nature whatsoever, including, without limitation, costs, fines, debts, expenses, penalties and attorneys' fees, known or unknown, arising out of the allegations in the Operative Class Complaint that could have been asserted by each Attorney General in his or her sovereign capacity as chief law enforcement officer of his or her respective jurisdiction. Notwithstanding the foregoing, in no event shall this release be construed to release Societe Generale or the AG SG Releasees, from any claims, conduct, causes of action of any type (whether common law, equitable, statutory, regulatory or administrative, class, individual or otherwise in nature), demands, disputes, damages, restitution, whenever incurred, or liabilities (including joint or several) of any nature whatsoever, including without limitation, costs, fines, debts, expenses, penalties and attorneys' fees, known or unknown, that have been alleged in other actions or investigations against Societe Generale by the Attorneys General, or any individual Attorney General, that do not arise out of the allegations in the Operative Class Complaint. In addition, the Attorneys Generals' release *does not* include claims that any Attorney General has or may have related to alleged manipulation or attempted manipulation of LIBOR, or other interest rate benchmarks.

22. The Attorneys General and Participating Attorneys General intend by this Settlement Agreement to settle with and release only Societe Generale, and all of its successors, assigns, subsidiaries, divisions, groups, affiliates and partnerships, including, without limitation, any of its respective current officers, directors and employees, for the claims and other matters arising out of the allegations in the Operative Class Complaint, and do not intend this Settlement Agreement, or any part hereof or any other aspect of the settlement or the releases, to extend to, to release or otherwise to affect in any way any rights that the Attorneys General have or may have against any other person, party, or entity whatsoever.

23. Notwithstanding the previous paragraph, specifically reserved and excluded from the release provided for in this section are civil or administrative claims, causes of action, counterclaims, set-offs, demands, actions, suits, rights and liabilities for damages,

restitution, disgorgement or taxes arising from the allegations in the Operative Class Complaint that any person other than the Attorneys General or Participating Attorneys General may have against Societe Generale, that are separate and distinct from claims, causes of action, counterclaims, set-offs, demands, actions, suits, rights and liabilities for damages, restitution, disgorgement or taxes that the Attorneys General may have in their sovereign capacity. Nothing in this paragraph shall in any way limit the releases provided by the Attorneys General above.

PARTICIPATION OF ADDITIONAL ATTORNEYS GENERAL

24. The attorney general of any state that wishes to join in this settlement may opt-in and accept the terms of this Settlement Agreement by signing the opt-in agreement appended hereto as Exhibit 3, within 60 days of the Effective Date. Any attorney general submitting a timely opt-in agreement will thereby become a party to this Settlement Agreement.

NOTICES AND REPORTS

25. All notices and reports required to be provided shall be sent electronically or via first- class mail, postage pre-paid as follows:

For Societe Generale: John M. Driscoll, Esq.
Managing Director
Societe Generale
245 Park Avenue
New York, New York 10167
john.driscoll@sgcib.com

General Counsel
Societe Generale – Americas
245 Park Avenue
New York, New York 10167

Head of Litigation, Enforcement, and Investigations
Societe Generale – Americas
245 Park Avenue
New York, New York 10167

Copy to: Matthew D. Ingber, Esq.
Mayer Brown LLP
1221 Avenue of the Americas
New York, New York 10020
mingber@mayerbrown.com

For Attorneys General: Michael E. Cole
Chief, Antitrust Department
Office of the Connecticut Attorney General
55 Elm Street
Hartford, Connecticut 06141
Michael.cole@ct.gov

Elinor R. Hoffmann
Deputy Chief, Antitrust Bureau
Office of the New York State Attorney General
120 Broadway, Suite 26C44
New York, New York 10271
Elinor.hoffmann@ag.ny.gov

Upon request by Societe Generale, the Attorneys General will designate a representative or group of no more than three representatives to serve as their liaison on issues of cooperation and administration of the Settlement Agreement.

OTHER PROVISIONS

26. Neither this Settlement Agreement nor the final judgment, nor any and all negotiations, documents, actions or discussions associated with such Settlement Agreement, shall be deemed or construed as any form of agreement or consent to representation by class counsel of government entities in violation of any statute or law. This Settlement Agreement does not in any way limit the Attorneys General's or any Participating Attorney General's authority to represent their respective government entities. Further, this Settlement Agreement does not in any way limit any government entity's ability to participate in the Class Settlement Agreement, or to be excluded from the Class or to opt-out of the Class.

27. This Settlement Agreement is entered into voluntarily and solely for the purpose of resolving the claims and causes of action against Societe Generale. This Settlement Agreement and any and all negotiations, communications, documents (including drafts) and discussions associated with it shall not be used for any other purpose, except in proceedings or actions to enforce or interpret this Settlement Agreement. It shall not constitute or be construed as an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Societe Generale or bar any Societe Generale entity from asserting any defense in any litigation or administrative or other proceeding based upon, arising out of or relating to, in whole or in part, the allegations in the Operative Class Complaint.

28. Nothing in this Settlement Agreement shall relieve Societe Generale of any obligations imposed by any applicable laws or regulations relating to the marketing, sale or placement of Municipal Derivative Transactions.

29. Nothing contained in this Settlement Agreement shall be construed as mandating or recommending that Societe Generale or any of its current employees be disqualified, suspended or debarred from engaging in any business in any jurisdiction, including but not limited to the marketing, sale or placement of Municipal Derivative Transactions or any other investment vehicle in any jurisdiction. Moreover, the Attorneys General agree that in connection with any state suspension and/or debarment proceeding instituted against Societe Generale or any of its current directors, officers, agents, or employees (or any other proceeding in which a state or local entity is considering not doing business with Societe Generale), at Societe Generale's request any Attorney General shall promptly make known to the suspending and/or debarring authority (or other relevant state or local entity) that Societe Generale has cooperated fully with the Attorneys General's Investigation of Municipal Derivative Transactions, has given substantial assistance to the Attorneys General's Investigation and has provided appropriate relief for the harm it caused. Notwithstanding the foregoing, this provision shall not require any Attorney General to disclose confidential information or to take any action that would compromise the Attorneys General's ongoing investigation.

30. This Settlement Agreement shall not confer any rights upon, and is not enforceable by, any persons or entities besides the Attorneys General and Societe Generale.

31. This Settlement Agreement may be executed in counterparts.

WHEREFORE, IT IS SO AGREED AND the following signatures are affixed hereto:

Dated: 22 February, 2016

Societe Generale, S.A.

By: _____
John M. Driscoll
Managing Director

STATE OF COLORADO
CYNTHIA H. COFFMAN
COLORADO ATTORNEY GENERAL

Dated: February 10, 2016

By: 

DEVIN LAIHO
Senior Assistant Attorney General
Consumer Protection Section
Attorneys for State of Colorado

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STATE OF CONNECTICUT
GEORGE JEPSEN
CONNECTICUT ATTORNEY GENERAL

By: _____ Dated : February 4, 2016

GEORGE JEPSEN

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THE DISTRICT OF COLUMBIA

KARL A. RACINE
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Dated: February 5, 2016

STATE OF FLORIDA
PAMELA JO BONDI
FLORIDA ATTORNEY GENERAL

By: _____ Dated: Feb. 5, 2016

Patricia A. Conners
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Dated January 26, 2016

LAWRENCE G. WASDEN
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STATE OF ILLINOIS
LISA MADIGAN
ILLINOIS ATTORNEY GENERAL

By: Robert W. Pratt

Dated: February 4, 2016

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STATE OF IOWA
THOMAS J. MILLER
ATTORNEY GENERAL OF IOWA

By: _____ Dated: February 4, 2016

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STATE OF KANSAS
DEREK SCHMIDT
Attorney General

Lynette R. Bakker
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Consumer Protection & Antitrust Division
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Date: February 3, 2016

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Chief, Antitrust Division

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Deputy Chief, Antitrust Division
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STATE OF MICHIGAN
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STATE OF MISSOURI

CHRIS KOSTER
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By: Anne E. Schneider
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In re: Societe Generale, S.A.

STATE OF MONTANA
TIMOTHY C. FOX
Attorney General

Dated: February 4, 2016

Chuck Munson
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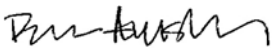
STATE OF NEVADA
ADAM PAUL LAXALT
Attorney General of Nevada

ERIC WITKOSKI
Consumer Advocate
Chief Deputy Attorney General



_____ Dated: February 3, 2016

By: BRIAN ARMSTRONG
Senior Deputy Attorney General
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Bureau of Consumer Protection
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STATE OF NEW JERSEY
JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL

By: _____ Dated: 2/05/2016

Brian F. McDonough
Assistant Attorney General
State of New Jersey, Office of the Attorney General
Department of Law and Public Safety
Division of Law
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Dated: February 3, 2016

STATE OF NEW YORK
ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

By: _____

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ROY COOPER
Attorney General of North Carolina

By: _____

K.D. Sturgis
Special Deputy Attorney General
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Tel. 919-716-6011
ksturgis@ncdoj.gov

Dated: February 3, 2016

STATE OF OHIO
MICHAEL DEWINE
Attorney General
Jennifer L. Pratt
Section Chief, Antitrust Section
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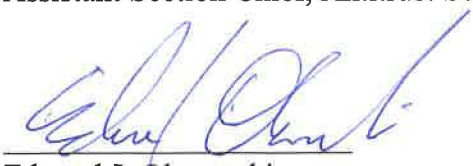

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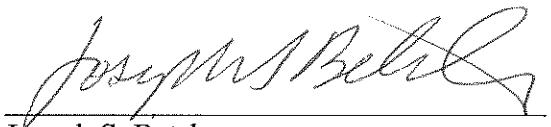

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January 26, 2016

SOCIÉTÉ GÉNÉRALE SETTLEMENT

The State of Wisconsin elects to participate in the settlement agreement among the Attorneys General and Société Générale.

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EXHIBIT 1

OPERATIVE CLASS COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MUNICIPAL DERIVATIVES ANTITRUST LITIGATION	MDL No. 1950
	Master Docket No. 08-02516 (VM) (DF)
THIS DOCUMENT RELATES TO:	**CORRECTED THIRD CONSOLIDATED AMENDED CLASS ACTION COMPLAINT**
ALL ACTIONS	JURY TRIAL DEMANDED

NATURE OF THE CASE

1. Plaintiffs allege herein a conspiracy among Defendants and certain named and unnamed co-conspirators, to fix, maintain or stabilize the price of, and/or to rig bids and allocate customers and markets for, Municipal Derivatives (as defined below) sold in the United States and its territories.

2. Plaintiffs and Provider Defendant Bank of America, N.A. ("Bank of America") have engaged in confidential discussions about some of the facts and circumstances detailed in this Complaint. The information contained in this Complaint comes in part from information obtained from Bank of America and in part from publicly-available information, including regulatory filings, other complaints on file in these proceedings and the Court's rulings on them, and pleadings and testimony in criminal cases.

3. This Complaint supersedes all of the allegations against defendants named in the Second Consolidated Amended Complaint ("SCAC") that the Court sustained in *Hinds County, Miss. v. Wachovia Nat'l Bank, N.A.*, 700 F.Supp.2d 378 (S.D.N.Y. 2010) ("*Hinds II*"). The present complaint differs principally from the SCAC in that it adds various GE entities as

named defendants, as the Court expressly permitted Interim Class Plaintiffs to do in *Hinds County, Miss. v. Wachovia Nat'l Bank, N.A.*, 885 F.Supp.2d 617 (S.D.N.Y. 2012) ("Hinds V"); *see also Hinds County, Miss. v. Wachovia Nat'l Bank, N.A.*, 620 F.Supp.2d 499 (S.D.N.Y. 2009) ("*Hinds I*"). Additions from prior complaints are also based in part on the Court's rulings in *Hinds County, Miss. v. Wachovia Nat'l Bank, N.A.*, 708 F.Supp.2d 348 (S.D.N.Y. 2010) ("*Hinds III*") and *Hinds County, Miss. v. Wachovia Nat'l Bank, N.A.*, No. 08 Civ. 2516. 2010 WL 1837823 (S.D.N.Y. April 26, 2010) ("*Hinds IV*"). The present Complaint also contains additions based on informations or indictments and guilty pleas that often postdated the Court's decisions in *Hinds II, Hinds III, Hinds IV, and Hinds V,* as well as settlements with Select State Attorneys General. These include and are incorporated by reference hereto:

(a) the "Indictment" (Oct. 29, 2009) and "Superseding Indictment" (Dec. 7, 2010) (and other pleadings or communications) against Broker Defendant CDR Financial Products ("CDR") and its officers David Rubin ("Rubin"), Zevi Wolmark ("Wolmark"), and Evan Andrew Zarefsky ("Zarefsky") in *United States v. Rubin/Chambers, Dunhill Ins. Servs.*, Inc., No. 09 Crim. 1058 (S.D.N.Y.) ("*CDR*") and the subsequent guilty pleas of CDR and Rubin (Dec. 30, 2011), Wolmark (filed Jan. 9, 2012), and Zarefsky (Jan. 9, 2012);

(b) the "Plea Agreement" (Feb. 22, 2010) of (and antecedent information against) Dani Naeh ("Naeh") of CDR in *United States v. Naeh*, No. 10 Crim. 139 (S.D.N.Y.) ("*Naeh*");

(c) the "Plea Agreement" (March 11, 2010) of (and antecedent information against) Matthew Rothman ("Rothman") of CDR in *United States v. Rothman*, No. 10 Crim. 200 (S.D.N.Y.) ("*Rothman*");

(d) the "Plea Agreement" (Jan. 29, 2010) of (and antecedent information against) Douglas Goldberg of CDR in *United States v. Goldberg*, No. 10 Crim. 209 (S.D.N.Y.) ("*Goldberg*");

(e) the "Plea Agreement" (May 21, 2010) of (and antecedent information against) Mark Zaino ("Zaino") of Provider Defendant UBS AG ("UBS") and, before that, CDR in *United States v. Zaino*, No. 10 Crim. 434 (S.D.N.Y.) ("*Zaino*");

(f) the "Plea Agreement" (Aug. 12, 2010) of (and antecedent information against) Martin Kanefsky ("Kanefsky") of Broker Defendant Kane Capital ("Kane") in *United States v. Kanefsky*, No. 10 Crim. 721 (S.D.N.Y.) ("*Kanefsky*");

(g) the "Indictment" (Aug. 19, 2010) against Dominick Carollo ("Carollo") of Provider Defendants the Royal Bank of Canada ("RBoC") and, before that, Provider Defendants Trinity Funding Co., LLC ("GE Trinity"), Trinity Plus Funding Co., LLC ("GE Trinity Plus"), and GE Funding Capital Market Services, Inc. ("GE Funding"); Steven Goldberg of FSA, and, before that, GE Trinity, GE Trinity Plus, and GE Funding, and Peter Grimm ("Grimm") of Provider Defendants GE Trinity, GE Trinity Plus, and GE Funding in *United States v. Carollo, et al*., No. 10 Crim. 654 (S.D.N.Y.) ("*Carollo*");

(h) the "Plea Agreement" (Sept. 8, 2010) of (and antecedent information against) Adrian Scott-Jones ("Scott-Jones") of Capital Financial Partners, Inc. ("CFP") in *United States v Scott-Jones*, No. 10 Crim. 794 (S.D.N.Y.) ("*Scott-Jones*");

(i) the "Information" (Sept. 9, 2010) against Douglas Campbell, formerly of Provider Defendants Bank of America and Piper Jaffray & Co. ("Piper Jaffray") in *United States v. Campbell*, No. 10 Crim. 803 (S.D.N.Y.) ("*Campbell*"), and subsequent "Plea Agreement" (Dec. 9, 2010);

(j) the "Plea Agreement" (Nov. 30, 2010) of (and antecedent information against) James Hertz ("Hertz") of Provider Co-Conspirator JPMorgan Chase & Co. ("JPMorgan") in *United States v. Hertz*, No. 10 Crim. 1178 (S.D.N.Y.) ("*Hertz*");

(k) the "Information" (Dec. 9, 2010) against Peter Ghavami ("Ghavami"), Gary Heinz ("Heinz"), and Michael Welty ("Welty") of UBS in *United States v. Ghavami, et al.*, No. 10 Crim. 1217 (S.D.N.Y.) ("*Ghavami*");

(l) the "Plea Agreement" (March 30, 2011) of Brian Zwerner ("Zwerner"), formerly of Provider Defendant Bank of America in *United States v. Zwerner*, No. 10 Crim. 293 (S.D.N.Y.) ("*Zwerner*");

(m) the "Plea Agreement" (July 18, 2012) of Alexander Wright ("Wright") of Provider Co-Conspirator JPMorgan in *United States v. Wright*, No. 12 Crim. 551 (S.D.N.Y.) ("*Wright*");

(n) the settlement agreement entered into on December 23, 2011 between GE Funding Capital Market Services, Inc. and the Attorneys General ("AGs") of various states;

(o) Agreement(s) Among the Attorneys General of the States and Commonwealths of Alabama, California, Connecticut, Florida, Illinois, Kansas, Maryland, Massachusetts, Michigan, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Colorado, the District of Columbia, Idaho, Iowa, Tennessee, Utah, North Dakota and Wisconsin ("Select State Attorneys General") and Bank of America Corporation (dated December 7, 2010), UBS (dated May 4, 2011), JPMorgan (dated July 7, 2011), and GE (dated December 23, 2011); and

(p) The present Complaint also contains additions based on the bill of particulars submitted by the DOJ in CDR and submitted as an exhibit to the February 10, 2010 letter to the Court in that case. With respect to CDR's role in the alleged conspiracy, the bill of particulars

lists approximately 250 affected transactions and refers to 30 individual and 25 entity co-conspirators. These additions are also prompted in part by the "Second Amended Complaint" (Feb. 23, 2011) in *Jefferson's Ferry v. Bank of America*, MDL No. 1950 (S.D.N.Y.) (Dkt. No. 1245) ("*Jefferson's Ferry* Complaint") and on a complaint filed by the Securities & Exchange Commission ("SEC") in *SEC v. LeCroy*, No. Cv. 09-B-2238 S (N.D. Ala.) ("*LeCroy*").

4. As explained below, Bank of America has received a conditional leniency letter from the DOJ's Antitrust Division. This fact, in and of itself, is significant. It means that Bank of America is an *admitted felon*. It further means that Bank of America is an *admitted co-conspirator*. The significance of obtaining a conditional leniency letter was explained by Scott D. Hammond, Deputy Assistant Attorney General for Criminal Enforcement, in a November 19, 2008 presentation available on the DOJ's website at http://www.usdoj.gov/atr/public/criminaI/239583.htm:

> *Does a leniency applicant have to admit to a criminal violation of the antitrust laws before receiving a conditional leniency letter?*
>
> Yes. The Division's leniency policies were established for corporations and individuals "reporting their illegal antitrust activity," and the policies protect leniency recipients from criminal conviction. Thus, *the applicant must admit its participation in a criminal antitrust violation involving price fixing, bid rigging, capacity restriction, or allocation of markets, customers, or sales or production volumes before it will receive a conditional leniency letter.* Applicants that have not engaged in criminal violations of the antitrust laws have no need to receive leniency protection from a criminal violation and will receive no benefit from the leniency program.
>
> When the model corporate conditional leniency letter was first drafted, the Division did not employ a marker system. Thus, companies received conditional leniency letters far earlier in the process, often before the company had an opportunity to conduct an internal investigation. However, the Division's practice has changed over time. The Division now employs a marker system, and the Division provides the company with an opportunity to

> investigate thoroughly its own conduct. While the applicant may not be able to confirm that it committed a criminal antitrust violation when it seeks and receives a marker, by the end of the marker process, *before it is provided with a conditional leniency letter, it should be in a position to admit to its participation in a criminal violation of the Sherman Act.* The Division may also insist on interviews with key executives of the applicant who were involved in the violation before issuing the conditional leniency letter. *A company that argues that an agreement to fix prices, rig bids, restrict capacity, or allocate markets might be inferred from its conduct but that cannot produce any employees who will admit that the company entered into such an agreement generally has not made a sufficient admission of criminal antitrust violation to be eligible for leniency. A company that, for whatever reason, is not able or willing to admit to its participation in a criminal antitrust conspiracy is not eligible for leniency.* Previously the model conditional leniency letters referred to the conduct being reported as "*possible* [. . . price fixing, bid rigging, market allocation] or other conduct violative of Section 1 of the Sherman Act." Because applicants must report a criminal violation of the antitrust laws before receiving a conditional leniency letter, the word "possible" has been deleted from the model letter, and a reference to "or other conduct constituting a criminal violation of Section 1 of the Sherman Act" has been added to the model letters. (Emphases added.)

5. This lawsuit arises out of an illegal agreement, understanding and conspiracy among providers and brokers of Municipal Derivatives to not compete and to rig bids for Municipal Derivatives sold to issuers of Municipal Bonds or other entities that use the proceeds of issuances of Municipal Bonds. This illegal agreement, understanding and conspiracy is based on *per se* illegal horizontal communications and conduct among providers of Municipal Derivatives. These providers have engaged in communications and conduct with the purpose and effect of restraining competition, such as rigging of bids, secret compensation of losing bidders, courtesy bids, deliberately losing bids, and agreements not to bid. Brokers have knowingly participated in this *per se* illegal conspiracy to limit competition by acting as conduits for communication of pricing and bidding information among providers with the knowledge and

consent of providers and have shared the wrongful profits from the illegal agreement to restrain competition.

6. There has been an unprecedented set of investigations by the DOJ's Antitrust Division, the Internal Revenue Service ("IRS"), and the SEC, into industry-wide collusive practices in the two-hundred year old municipal bond industry. Over thirty large commercial and investment banks, insurance companies, and brokers have been subpoenaed, and the offices of three brokers have been raided by the Federal Bureau of Investigation. Numerous employees and former employees of various Defendants received letters notifying them that they are regarded as targets of the grand jury investigation concerning antitrust and other violations regarding contracts related to municipal bonds. As noted above, multiple indictments or informations have been filed and numerous individuals have entered guilty pleas.

7. Plaintiffs bring this action to seek civil redress for their injuries on behalf of themselves and all state, local and municipal government entities and their agencies, as well as private entities, that purchased by competitive bidding or auction Municipal Derivatives in the United States and its territories directly from the Provider Defendants (as defined below) and/or through Broker Defendants (as defined below) in the period from January 1, 1992 through August 18, 2011 (the "Class Period"). This time period tracks the time period of the beginning of the DOJ's investigation. At all relevant times, the Provider Defendants and the Broker Defendants issued and/or sold Municipal Derivatives. During the Class Period, Defendants and certain named and unnamed co-conspirators agreed, combined, and conspired with each other to fix prices, and/or to rig bids and allocate customers and markets of Municipal Derivatives sold in the United States and its territories. As a result of the unlawful conduct of Defendants and named and unnamed co-conspirators, Plaintiffs and the Class (as defined in this Complaint)

received, inter alia, supra-competitive interest rates on these contracts than they would have in a competitive market, and paid ancillary fees and other costs and expenses related thereto. Plaintiffs have consequently suffered injury to their business and property.

JURISDICTION AND VENUE

8. This action is instituted under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, to recover treble damages and the costs of this suit, including reasonable attorneys' fees, against Defendants for the injuries sustained by Plaintiffs and the members of the Class by reason of the violations, as hereinafter alleged, of Section 1 of the Sherman Act, 15 U.S.C. § 1.

9. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26.

10. Venue is proper in this District pursuant to Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 26, and 28 U.S.C. § 1391 (b), (c) and (d), because during the Class Period the Defendants resided, transacted business, were found, or had agents in this District, because a substantial portion of the affected interstate trade and commerce described herein is and has been carried out in this District, and because overt acts in furtherance of the alleged conspiracy were undertaken in this District.

PLAINTIFFS

11. Plaintiff City of Baltimore, Maryland ("Baltimore") purchased one or more Municipal Derivatives from at least one Provider Defendant or co-conspirator and/or through at least one Broker Defendant or co-conspirator during the Class Period.

12. Plaintiff Central Bucks School District ("Central Bucks") purchased one or more Municipal Derivatives from at least one Provider Defendant or co-conspirator and/or through at least one Broker Defendant or co-conspirator during the Class Period.

13. Plaintiff Bucks County Water & Sewer Authority purchased one or more Municipal Derivatives from at least one Provider Defendant or co-conspirator and/or through at least one Broker Defendant or co-conspirator during the Class Period.

14. The entities identified in the two preceding paragraphs are referred to collectively as the "Bucks County Plaintiffs."

PROVIDER DEFENDANTS

15. The entities listed below (along with Natixis Funding Corp. f/k/a IXIS Funding Corp, and before that, f/k/a CDC Funding Corp., to the extent it acted as a provider with respect to Municipal Derivatives) are collectively referenced herein as "Provider Defendants."

16. Provider Defendant Bank of America is a Delaware corporation with its principal place of business in Charlotte, North Carolina. During the Class Period, Bank of America issued and sold Municipal Derivatives to members of the Class. Bank of America transacts business in the Southern District of New York.

17. Provider Defendants GE Trinity and GE Trinity Plus, members of the GE Funding Capital Market Services Group ("GE Funding CMS"), are New York limited liability corporations with their principal place of business in Connecticut. During the Class Period, GE Trinity and GE Trinity Plus issued and sold Municipal Derivatives to members of the Class.

18. Provider Defendant GE Funding Capital Market Services, Inc. ("GE Funding"), a member of the GE Funding CMS, is a Delaware corporation with its principal place of business in Connecticut. During the Class Period, GE Funding issued and sold Municipal Derivatives to members of the Class.

19. GE Trinity, GE Trinity Plus and GE Funding are referred to collectively herein as "GE/Trinity entities."[1]

20. Provider Defendant National Westminster Bank plc ("NatWest") is a public limited company with its principal place of business in London, England. During the Class Period, NatWest issued and sold Municipal Derivatives to members of the Class. NatWest is a subsidiary of the Royal Bank of Scotland.

21. Provider Defendant Piper Jaffray & Co. ("Piper Jaffray") is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. During the Class Period, Piper Jaffray issued and sold Municipal Derivatives to members of the Class. Piper Jaffray also provided brokerage functions to issuers.

22. Provider Defendant Société Générale SA ("Société Générale") is a French corporation with its principal place of business in Paris, France. During the Class Period, Société Générale issued and sold Municipal Derivatives to members of the Class.

23. Provider Defendant UBS AG ("UBS") is a Swiss corporation with its principal place of business in Zurich, Switzerland. During the Class Period, UBS issued and sold Municipal Derivatives to members of the Class. In 2000, UBS merged with Paine Webber.

BROKER DEFENDANTS

24. The entities listed below (along with Piper Jaffray, to the extent it performed brokerage services relating to Municipal Derivatives) are collectively referred to herein as "Broker Defendants."

[1] Susman Godfrey L.L.P. is Counsel for Plaintiffs against all Defendants except the GE related entities added here, Trinity Funding Co. LLC or GE Funding Capital Market Services, Inc.

25. Broker Defendant CDR (a/k/a Chambers Dunhill & Rubin Co.) is a California corporation with its principal place of business in Beverly Hills, California. During the Class Period, CDR acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants.

26. Broker Defendant George K. Baum & Co. ("Baum") is a Missouri corporation with its principal place of business in Kansas City, Missouri. During the Class Period, Baum acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants.

27. Broker Defendant Investment Management Advisory Group, Inc. ("IMAGE") is a Pennsylvania corporation with its principal place of business in Pottstown, Pennsylvania. During the Class Period, IMAGE acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants.

28. Broker Defendant Natixis Funding Corp. f/k/a IXIS Funding Corp, and before that, f/k/a CDC Funding Corp. ("CDC") is a New York corporation with its principal place of business in New York, New York. During the Class Period, CDC acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants. CDC also functioned on some deals as a Provider, and to the extent it did so, is also referenced herein as one of the Provider Defendants.

29. Broker Defendant Sound Capital Management, Inc. ("Sound Capital") is a Minnesota corporation with its principal place of business in Eden Prairie, Minnesota. During the Class Period, Sound Capital acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants.

NAMED AND UNNAMED CO-CONSPIRATORS

30. Various other persons, firms and corporations, not named herein as a Provider Defendant or Broker Defendant have participated as co-conspirators with the Provider Defendants and/or the Broker Defendants and have performed acts and made statements in furtherance of the conspiracy. Some of these firms are as yet unidentified. Others that have been identified are as follows.

31. Provider co-conspirator AIG Financial Products Corp. ("AIG Financial") is a Delaware corporation with its principal place of business in New York, New York. During the Class Period, AIG Financial issued and sold Municipal Derivatives to members of the Class.

32. Provider co-conspirator Bear, Stearns & Co., Inc. ("Bear Stearns") was a Delaware corporation with its principal place of business in New York, New York. During the Class Period, Bear Stearns issued and sold Municipal Derivatives to members of the Class. In March of 2008, Bear Stearns was acquired by Co-Conspirator JPMorgan Chase & Co. Bear Stearns is now a division of JPMorgan Chase & Co., but still operates a Municipal Bond Department and a Municipal Derivatives trading desk. *See* <http://www.bearstearns.com/sitewide/institutions/fixed_income/municipal_debt/index.htm>.

33. Provider co-conspirator Lehman Brothers ("Lehman") is a Delaware corporation with its principal place of business in New York, New York. During the Class Period, Lehman issued and sold Municipal Derivatives to members of the Class. Lehman filed for bankruptcy in September of 2008.

34. Provider co-conspirator JPMorgan Chase & Co. ("JPMorgan") is a Delaware corporation with its principal place of business in New York, New York. During the Class Period, JPMorgan issued and sold Municipal Derivatives to members of the Class.

Plaintiffs have entered into a settlement of their claims against JPMorgan in a settlement approved by the Court on December 14, 2012.

35. Provider co-conspirator Morgan Stanley ("Morgan Stanley") is a Delaware corporation with its principal place of business in New York, New York. During the Class Period, Morgan Stanley issued and sold Municipal Derivatives to members of the Class. Plaintiffs have settled their claims against Morgan Stanley in a settlement approved by the Court on December 27, 2011.

36. Provider co-conspirator SunAmerica Life Assurance Co. ("SunAmerica") is an Arizona corporation with its principal place of business in Los Angeles, California. During the Class Period, SunAmerica issued and sold Municipal Derivatives to members of the Class.

37. Provider co-conspirator Wachovia Bank N.A. ("Wachovia") was a national chartered banking association with its principal place of business in Charlotte, North Carolina. During the Class Period, Wachovia issued and sold Municipal Derivatives to members of the Class. On December 31, 2008, Wells Fargo & Co. acquired Wachovia, as reflected in the former's SEC Form 10-Q for the period ending March 31, 2009. Plaintiffs have entered into a settlement of their claims against Wachovia in a settlement approved by the Court on February 19, 2013.

38. Provider co-conspirator Wells Fargo & Co., Inc. ("Wells Fargo") is a diversified financial services company with its headquarters in San Francisco, California. Wells Fargo was sued herein as the successor in interest to Wachovia, having acquired the assets and liabilities of the latter in the aforementioned transaction that closed on December 31, 2008. Wells Fargo's most recent Form 10-Q listed the present action under pending "Legal Actions."

Plaintiffs have entered into a settlement of their claims against Wells Fargo in a settlement approved by the Court on February 19, 2013.

39. Provider co-conspirator XL Capital Ltd. ("XL Capital") is a Bermuda corporation with its principal place of business in Hamilton, Bermuda. During the Class Period, XL Capital issued and sold Municipal Derivatives to members of the Class.

40. Provider co-conspirator XL Asset Funding Co. I LLC ("XL Asset Funding") is a limited liability company with its principal place of business in Schaumburg, Illinois. During the Class Period, XL Asset Funding issued and sold Municipal Derivatives to members of the Class.

41. Provider co-conspirator XL Life Insurance & Annuity, Inc. ("XL Life Insurance") is a subsidiary of XL Life & Annuity Holding Co. with its principal place of business in Schaumburg, Illinois. During the Class Period, XL Life Insurance issued and sold Municipal Derivatives to members of the Class. XL Capital, XL Asset Funding and XL Life Insurance are referred to collectively herein as "XL."

42. The Provider entities identified in the preceding paragraphs are referred to collectively as the "Provider co-conspirators."

43. Broker co-conspirator Feld Winters Financial LLC ("Feld Winters") is a California limited liability company with its principal place of business in Sherman Oaks, California. During the Class Period, Feld Winters acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants and the Provider co-conspirators.

44. Broker co-conspirator First Southwest Company ("First Southwest") is a corporation with its principal place of business in Dallas, Texas. During the Class Period, First

Southwest acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants and the Provider co-conspirators.

45. Broker co-conspirator Kinsell Newcomb & De Dios Inc. ("Kinsell") is a California corporation with its principal place of business in Carlsbad, California. During the Class Period, Kinsell acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants and the Provider co-conspirators.

46. Broker co-conspirator Mesirow Financial ("Mesirow") is an Illinois corporation with its principal place of business in Chicago, Illinois. During the Class Period, Mesirow acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants and the Provider co-conspirators.

47. Broker co-conspirator Morgan Keegan & Co., Inc. ("Morgan Keegan"), a subsidiary of Regions Financial Corp., is a Tennessee corporation with its principal place of business in Memphis, Tennessee. During the Class Period, Morgan Keegan acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants and the Provider co-conspirators.

48. Broker co-conspirator PackerKiss Securities, Inc. ("PackerKiss") is a Florida corporation, with its principal place of business in Delray Beach, Florida. During the Class Period, PackerKiss acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants and the Provider co-conspirators.

49. Broker co-conspirator Winters & Co. Advisors, LLC ("Winters") is a California limited liability company with its principal place of business in Los Angeles, California. During the Class Period, Winters acted as a broker for members of the Class in purchasing Municipal Derivatives from the Provider Defendants.

50. The Broker entities identified in the preceding paragraphs are referred to collectively as the "Broker co-conspirators."

51. Whenever in this Complaint reference is made to any act, deed or transaction of any corporation or entity, the allegation means that the corporation or entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation or entity's business or affairs.

DEFINITIONS AND BACKGROUND

MUNICIPAL BONDS

52. Municipal bonds are issued by states, cities, and counties, or their agencies, as well as by tax-exempt, non-profit private entities (collectively "issuers") to raise funds for various types of large public projects, including, for example, the construction and repair of roads, buildings, mass transit, water treatment plants, and power plants. Because of the tax-exempt status of most municipal bonds, investors usually accept lower interest payments than on other types of borrowing. This makes the issuance of bonds an attractive source of financing to many government and private entities, as the borrowing rate available in the tax free municipal bond market is frequently lower than what is available through other channels.

53. Municipal bonds bear interest at either a fixed or variable rate of interest. The issuer of a municipal bond receives a cash payment at the time of issuance in exchange for a promise to repay the investors who provide the cash payment (the bond holder) over time. Repayment periods typically span at least several years.

54. In order for municipal bonds to maintain their tax-exempt status, IRS regulations governing the bonds generally require all money raised by a bond sale to be spent on one-time capital projects within three to five years of issuance.

55. Municipal bond proceeds typically are put into three types of funds to serve their purpose within the anticipated life of the project. The largest type of fund is known as the project fund or construction fund and, as its name implies, is used to pay for the construction or public works project at hand. The two smaller types of funds are administrative in nature, and ensure that the project fund is adequately funded and that the investors recoup their investment. The debt service fund, or "sinking fund," contains the money used to make principal and interest payments on the bond. The payments out of this fund usually are due semi-annually, although the principal portion of the payment may only be due annually. The debt service reserve fund ensures that if unforeseen contingencies occur, debt obligations can still be paid.

56. Because municipal bonds typically are used to fund multi-year projects, most of a given bond's proceeds cannot or need not be spent in one lump sum. Rather, the proceeds are spent at regularly set intervals, and are invested to earn interest until they are put to use for their stated purpose.

57. The municipal bond industry is extremely large. Approximately $385 billion worth of municipal bonds were issued in 2006, according to the Securities Industry and Financial Markets Association. The total United States municipal bond market itself presently is valued at approximately $2.6 trillion.

MUNICIPAL DERIVATIVES

58. The investment vehicles in which issuers or those who receive money from bond issuances invest their bond proceeds until they are ripe for use are known as Municipal Derivatives. "Municipal Derivatives" is an umbrella term that refers to a variety of tax-exempt vehicles that government entities use to invest the proceeds of bond offerings while they are waiting to spend them for their given purposes. The term has been used in the industry

to describe swaps and related transactions (as defined below) and, on occasion, the various types of Guaranteed Investment Contracts (as also defined below). As used in this Complaint, the term encompasses all of the transactions described in the next twelve paragraphs.

59. Municipal Derivatives are provided by highly rated insurance companies and large commercial and investment banks, and they typically are sold to government entities. Municipal Derivatives are a particularly favored form of investment in the municipal bond industry because they are considered safe and reliable investment vehicles.

60. When governmental or private non-profit entities desire to purchase Municipal Derivatives (*i.e.*, enter into Municipal Derivative contracts), they frequently will engage a broker to obtain the best possible price for such derivatives by arranging an auction among multiple providers of Municipal Derivatives.

61. Municipal Derivatives are grouped generally into two categories, pertaining either to: (a) the investment of bond proceeds; or (b) the bond's underlying interest rate obligations. The former category of Municipal Derivatives includes instruments such as Guaranteed Investment Contracts, commonly known as GICs (forward purchase, supply, or delivery agreements and repurchase agreements) and certificates of deposit ("CDs") on escrow agreements. The latter category of Municipal Derivatives includes instruments such as Swaps, Options, "Swaptions," Collars, and Floors, which are risk-shifting vehicles.

62. A GIC is an agreement secured by a contract with a financial institution *(i.e.*, a provider), which guarantees a fixed rate of return and a fixed date of maturity. GICs also can mean any unallocated group contract, investment contract, funding agreement, guaranteed interest contract or other similar instrument in which a provider agrees to guarantee a fixed or variable rate of interest or a future payment that is based on an index or similar criteria that is

payable at a predetermined date on monies that are deposited with the company. The types of investment agreements that the IRS generally references as GICs are: (a) Forward Purchase or Forward Delivery Agreements; (b) Repurchase Agreements or Collateralized GICs; and (c) Unsecured or Uncollateralized GICs.

63. A Forward Purchase or Forward Delivery Agreement is often used in connection with debt service funds. Issuers (*i.e.*, municipalities and other nonprofit entities authorized to issue bonds) can request bids based on rate of return or on upfront payments, although the latter is the norm. This is an agreement wherein the buyer and seller agree to settle their respective obligations at some specified future date based upon the current market price at the time the contract is executed. Forward contracts are generally entered into in the over-the-counter markets. A forward contract may be used for any number of purposes. For example, a forward contract may provide for the delivery of specific types of securities on specified future dates at fixed yields for the purpose of optimizing the investment of a debt service reserve fund. A forward refunding is used where the bonds to be refunded are not permitted to be advance refunded on a tax-exempt basis under the Internal Revenue Code. In such a case, the issuer agrees to issue, and the underwriter agrees to purchase, the new issue of bonds on a future date that would effect a current refunding.

64. An Unsecured or Uncollateralized GIC does not involve associated securities, but rather pure funds, and thus functions like a savings account. It is used most often for construction or project funds. In the bidding process, the issuer sets forth a proposed draw-down schedule in situations where it wants to spend all of the bond proceeds, for example, within a three-year period. These agreements typically have terms addressing flexibility issues

regarding, for example, requirements to pay or not pay penalties for not meeting deadlines, such as construction benchmarks.

65. A Repurchase Agreement or "Collateralized" GIC is an agreement consisting of two simultaneous transactions whereby the issuer purchases securities from a provider, and the provider agrees to repurchase the securities on a certain future date at a price that produces an agreed-upon rate of return. This is known as a collateralized GIC because the issuer possesses securities as collateral for the GIC until the maturity date.

66. When bonds are issued to refinance a prior issue, and principal or interest on the prior issue will be paid more than 90 days after issuance of the new refunding bonds, the new bonds will be considered an "advance refunding" of the prior bonds. Proceeds of such an issue are generally invested in an advance refunding escrow to be used to pay principal and interest on, and redemption price of, the prior bonds. Under the arbitrage provisions of Section 148 of the Internal Revenue Code, proceeds of the refunding issue invested in the advance refunding escrow generally may not be invested at yield that is higher than the yield on the refunding issue. It is not always possible to have the investments in the escrow maturing on precisely the same dates that amounts will be needed to pay principal or interest on the prior bonds, so amounts potentially will sit un-invested in the escrow for such periods of time. In order to avoid this inefficiency, the issuer may enter into a forward float agreement with an investment provider, under which the issuer typically will receive an up-front payment in exchange for giving the investment provider the right to invest the proceeds during the float periods. The up-front payment received by the issuer must be taken into account in computing the yield on the advance refunding escrow for purposes of the arbitrage rules.

67. A Swap is a type of agreement frequently used with respect to the exchange of interest rate obligations. A swap may be used to achieve desired tax results, or to alter various features of a bond portfolio, including call protection, diversification or consolidation, and marketability of holdings. There are several types of swaps: (a) floating-for-fixed interest swap; (b) fixed-for-floating interest swap; and (c) floating-for-floating (basis-rate) swap, where the two are based on different indices *(i.e.,* LIBOR or BMA).

68. An Option is a provision in a bond contract where the Provider has the right, on specified dates after required notification, to cancel or terminate a Municipal Derivative.

69. A "Swaption" is the combination of a Swap and an Option.

70. A Floor (also known as an "interest rate floor") is an agreement whereby the issuer agrees to pay a stated rate of interest even if the actual rate on the variable rate debt is lower. The interest rate floor agreement is entered into with a third-party who typically pays the issuer an upfront fee in exchange for the right to collect the difference between the interest rate floor and the actual lower rate on the debt. It is used typically on variable rate debt, and refers to the minimum interest rate that can be paid on the debt. Thus, a Floor agreement establishes, for an issuer of variable rate bonds, a minimum or "floor" rate of interest that the issuer will effectively pay, though the bonds themselves may state a different minimum rate.

71. A Collar is an agreement entered into by the issuer or obligor of variable rate debt combining an interest rate cap and an interest rate floor. As with a Floor agreement, the floor component of the Collar establishes the effective minimum rate of interest that the issuer will pay. The cap component "caps" or establishes a maximum rate of interest the issuer will

effectively pay, which again may vary from the maximum stated rate of interest on the variable rate debt.

72. Like the municipal bond industry, the Municipal Derivatives industry is very large. A substantial portion of the approximately $400 billion annually spent on municipal bonds is invested annually in Municipal Derivatives.

73. The Municipal Derivatives industry is relatively concentrated. There are no more than 20 major providers of Municipal Derivatives in the United States. With respect to GICs in particular, there are 10 to 12 major dealers in the United States. On the other hand, the number of issuers is in the tens of thousands.

74. In a competitive marketplace, providers would be expected to compete against each other for issuers' business on the basis of the highest rate of return for Municipal Derivatives that they could earn for issuers.

IRS RULES AND REGULATIONS

75. IRS rules and their corresponding regulations subject issuers to potential taxation from arbitrage (*i.e.,* profit) off of their tax-exempt bond proceeds, subject to certain exceptions. *See* Internal Revenue Code § 148(a); Internal Revenue Code §§ 148(c), (d) and (e) (enumerating exceptions to this principle). Specifically, if the yield from the municipal derivative exceeds the bond's yield by a certain amount, it will be deemed arbitrage and be subject to taxation. In addition, providers cannot divert arbitrage earnings, meaning that they cannot "burn" an otherwise arbitrage yield by charging the issuer a higher fee and reducing the yield by the amount of the fee in order to comply with the rules.

76. The purpose of the rules and regulations governing arbitrage is to limit issuers' ability to take advantage of tax exempt rates on municipal bonds by investing the bond proceeds at higher, non-tax exempt rates. The rules and regulations, therefore, require all interest

that exceeds the bond rate made on tax exempt bond investments to be rebated to the IRS, absent an exception.

77. Another group of IRS regulations sets forth the procedure for establishing the fair market value of GICs. *See* Treasury Reg. § 1.148-5(d)(6). These regulations govern the bidding process for GICs, and there is a rebuttable presumption that a fair price is obtained for GICs procured in compliance with these regulations. Key regulations include the following:

a. The bid specifications must be in writing;

b. The bid specifications must be timely forwarded to potential providers;

c. The bid specifications must contain all material terms (*i.e.*, the term directly or indirectly affects yield);

d. The bid specifications must contain "a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the issuer or any other person (whether or not in connection with the bond issue), and that the bid is not being submitted solely as a courtesy to the issuer or any other person…." (Section 1.148-5(d)(6)(iii)(a)(3));

e. The bid specifications must be commercially reasonable;

f. There must be a legitimate business purpose for all terms in the bid specifications other than solely to increase the price or reduce the yield;

g. The bid specifications must contain a reasonably expected draw down schedule;

h. All potential providers must have an equal opportunity to bid, and no potential provider can have a last look to review other bids before bidding; and

i. The issuer must receive at least bids from at least "three reasonably competitive providers" (Section 1.148-5(d)(6)(iii)(a)(7)).

78. The intent and purpose behind the IRS safe harbor regulations is to provide a fair, competitive, and transparent process for issuers to obtain the best possible price for tax-exempt municipal derivatives. But due to the concerted effort of the Broker Defendants and Broker co-conspirators, the Provider Defendants and Provider co-conspirators and unnamed co-conspirators during the Class Period to conspire to fix prices, rig bids and allocate customers and markets – as opposed to competing– this laudable goal was not realized.

FACTUAL ALLEGATIONS

OVERVIEW OF WRONGDOING ALLEGED

79. During the Class Period defined herein, the Provider Defendants and Provider co-conspirators entered into a continuing agreement, understanding, and conspiracy to unreasonably restrain trade and commerce in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

80. In particular, the Provider Defendants and Provider co-conspirators have combined and conspired to allocate customers and/or fix or stabilize the prices of Municipal Derivatives, including the interest rates paid to issuers on such derivatives, sold in the United States through agreements not to compete and acts of bid rigging. Overt acts in furtherance of this conspiracy, including use of the mails or wires to transmit and process rigged bids, were undertaken in this District.

81. The Broker Defendants and Broker co-conspirators have knowingly participated in the illegal agreement, understanding, and conspiracy not to compete and to rig

bids in order to win the favor of the Provider Defendants and Provider co-conspirators and share in the profits of the conspiracy, all in breach of their fiduciary and other duties as agents for Plaintiffs and members of the class during the bidding process.

82. The objective of the alleged illegal agreement, understanding and conspiracy is to artificially suppress interest rates paid on, lower the value of, and/or reduce and/or stabilize the market prices of Municipal Derivatives sold by Provider Defendants and Provider co-conspirators.

83. Plaintiffs and Bank of America have engaged in confidential discussions about many of the facts and circumstances alleged in this Complaint, as noted above. In addition to information supplied by Bank of America, the allegations herein are supported by disclosures in connection with investigations being conducted by the DOJ's Antitrust Division and the IRS into industry-wide collusive practices in the Municipal Derivatives industry.[2]

84. Information concerning the workings of the alleged conspiracy has been provided by a confidential witness formerly employed by Bank of America who is cooperating with the DOJ in its antitrust investigation and whose identity has not been revealed to Plaintiffs. This person shall be referred to herein as "CW." The information provided by this witness gives only a partial picture of the workings of the alleged conspiracy, but is illustrative of how it operated.

85. It is further known, as described below, that the extant audiotapes from Bank of America's Municipal Derivatives trading desk contain unlawful discussions with its

[2] The SEC is also conducting a parallel investigation that has led to Wells notices recently being issued to Bank of America, GE Funding, UBS, FSA, JPMorgan, Wachovia and Bear Stearns. A Wells notice informs a company that an investigation by regulators is completed and charges may be filed.

competitors regarding bid rigging and customer allocation of Municipal Derivatives. As Charles Anderson ("Anderson"), former field operations manager for the IRS's tax-exempt bond office, has said, "I have listened to tape recordings of bankers talking to each other saying, 'This law firm or lawyer will go along, they know what's going on, they'll give us an opinion.….' It might take a little time to unwind it all, but I think we've only seen the tip of the iceberg. Ultimately, the same kinds of acts that give rise to 6700 [liability] can also give rise to criminal conspiracy counts against attorneys. I would not be surprised to see bankers and lawyers go to jail."

AGREEMENT AND CONSPIRACY TO RIG BIDS AND ALLOCATE CUSTOMERS

86. The Provider Defendants and Provider co-conspirators who knowingly and intentionally engaged in these rigged auctions understood that they would take turns providing the winning bid.

87. At times, as described below, the Provider Defendants and Provider co-conspirators directly discussed with each other the terms of their bids and discussed their collusive activities with Broker Defendants and broker co-conspirators.

88. One venue at which these discussions occurred was the respective Municipal Derivatives trading desks maintained by each of the Provider Defendants and Provider co-conspirators. These trading desks were often located in the same localities. For example, Bank of America, Wachovia and JPMorgan all maintained municipal derivative trading desks in Charlotte, North Carolina. Other Provider Defendants or Provider co-conspirators maintained such desks in New York City. E-mails to and from these trading desks were sent routinely and telephonic conversations at these trading desks were routinely audiotaped. Unlawful communications were conducted among the Provider Defendants and Provider co-conspirators by other means as well, such as cellular telephones, Blackberries and face-to-face meetings.

89. On numerous other occasions, as described below, communications among the Provider Defendants and Provider co-conspirators were made through one or more of the Broker Defendants, who would act as the authorized go-betweens of the Provider Defendants and Provider co-conspirators by communicating and coordinating the terms of their respective bids. The Provider designated to win a particular auction frequently bid after it had been provided with the terms of the bids provided by the other bidders, a practice known as a "last look" that is expressly forbidden by IRS regulations.

90. At times, one or more of the Provider Defendants and Provider co-conspirators engaged in complementary trades to compensate other Providers Defendants and Provider co-conspirators, who either did not submit bids or who engaged in the provision of sham bids. On other occasions, the winning Provider, including at times one or more of the Provider Defendants and Provider co-conspirators, would secretly compensate one or more Provider Defendants and Provider co-conspirators for declining to submit a bid.

91. The existence of the illegal agreement, understanding and conspiracy is confirmed by *per se* illegal horizontal communications among marketing personnel employed in the Municipal Derivative departments of the Provider Defendants. These individuals have participated in direct communications with competitor providers with respect to the following, *inter alia*:

a. the rigging of bids, including the collusive suppression of interest rates paid to issuers on Municipal Derivatives;

b. conduct that would be used to limit competition;

c. sharing of profits from a winning bid with a losing bidder and other secret compensation of losing bidders;

d. bids that would be won by specific Provider Defendants and Provider co-conspirators; and

e. an exchange of a deliberately losing bid for a future winning bid.

92. The Broker Defendants and Broker co-conspirators' knowing participation in the illegal agreement, understanding and conspiracy not to compete and to rig bids is established by their serving as a conduit for indirect communications among the Provider Defendants and Provider co-conspirators that were *per se* illegal. Again, overt acts in furtherance of this conspiracy, including, on information, use of the mails or wires to transmit and process rigged bids, were undertaken in this District. The Provider Defendants and Provider co-conspirators also shared their wrongful profits from the illegal agreement, understanding and conspiracy, by paying kickbacks to Broker Defendants and Broker co-conspirators. The existence of the illegal agreement, understanding and conspiracy is further established by *per se* illegal horizontal and coordinated conduct among the marketing personnel employed in the municipal bond/derivative departments of the Provider Defendants and Provider co-conspirators. These individuals have participated in, *inter alia*, the following conduct to limit competition, rig bids and to create the appearance of competition where there was none:

a. courtesy bids submitted to create the appearance of competition where there was none;

b. bids known to be unrealistically low and deliberately losing bids;

c. bidding processes where only one bid was sufficiently high to make the deal work;

d. agreements to share profits from a winning bid with a losing bidder through transactions between Provider Defendants and co-conspirators;

e. conduct in violation of IRS regulations relating to the bidding process;

f. secret last look agreements; and/or

g. agreements not to bid.

93. The Broker Defendants and Broker co-conspirators' knowing participation in the illegal agreement, understanding and conspiracy not to compete and to rig bids is also established by their participation in the *per se* illegal conduct to limit competition, rig bids and to create the appearance of competition where there was none. Broker Defendants and Broker co-conspirators further participated in and facilitated the illegal agreement, understanding and conspiracy by acting as the conduits for passing confidential pricing and bidding information among, and arranging the allocation of winning bids among, the Provider Defendants and Provider co-conspirators, all with the knowledge and consent of Broker Defendants and Broker co-conspirators. The Broker Defendants and Broker co-conspirators further communicated to the Provider Defendants and Provider co-conspirators concerning, *inter alia*:

a. winning bids that would be allocated to Provider Defendants and co-conspirators;

b. confirming understandings that bids would be won by Provider Defendants and Provider co-conspirators;

c. confirming understandings that bids would be lost by Provider Defendants and Provider co-conspirators;

d. the fact that bids were being rigged; and/or

e. bid levels that would be necessary by Provider Defendants and Provider co-conspirators to win or lose a bid.

PARTIAL LISTING OF INDIVIDUAL PARTICIPANTS IN THE ALLEGED CONSPIRACY

94. Individuals employed by the Provider Defendants or Provider Co-conspirators who have engaged in the illegal communications and conduct among Provider Defendants and Provider co-conspirators to restrain competition include, but are not limited to, the following. These individuals were not randomly selected from Provider Defendants' or Provider co-conspirators' corporate directories, but are people who have acknowledged that they are targets of DOJ prosecution and/or have been identified by Bank of America as engaging in collusive conduct and/or have testified at trial regarding their conspiratorial activities.

a. Douglas Campbell

Campbell was a former Bank of America Municipal Derivatives sales team manager. He left Bank of America in August of 2002 and then worked for Piper Jaffray, with whom he is no longer employed. Campbell had numerous conspiratorial communications, with, *inter alia*, Jim Towne of Piper Jaffray, Martin McConnell of Wachovia, Mark Zaino of UBS, Martin Stallone of IMAGE, Johan Rosenberg of Sound Capital, Douglas Goldberg of CDR, Dani Naeh of CDR and a Mr. Steinhauer of Baum relating to the alleged conspiracy, as described below. Campbell also authored the June 28, 2002 e-mail on kickbacks to Piper Jaffray, CDR and Winters described below. The e-mail indicates communications on this topic to Jim Towne. Campbell participated in or oversaw unlawful collusive discussions with other Defendants and co-conspirators conducted from Bank of America's Municipal Derivatives trading desk or other venues. On December 9, 2010, Campbell pled guilty to various acts of bid rigging in violation of federal antitrust and fraud laws.

b. Dominick Carollo ("Carollo")

Carollo served as Vice President of the GE/Trinity entities from 1993 through November of 2002. From July of 2003 through November of 2006, Carollo served as Managing Director at

RBoC's New York offices. Carollo has been convicted of acts in violation of federal law while he was at GE Capital and RBoC. In the criminal case, Douglas Goldberg testified that Carollo provided "last looks" to entities including JPMorgan, Bank of America, Société Générale, Lehman Brothers, and Bear Stearns. Douglas Goldberg also testified that the GE/Trinity entities would submit bids under entities FGIC, GE Trinity, and GE Trinity Plus. On May 18, 2012, Carollo was found guilty on two counts of conspiracy to commit wire fraud and defraud the United States.

c. Peter Ghavami ("Ghavami")

Ghavami served as co-head and Managing Director of UBS' Municipal Derivatives desk from January of 2001 through March of 2004. On September 4, 2012, Ghavami was found guilty on two counts of conspiracy to commit wire fraud and one count of substantive wire fraud.

d. Gary Heinz ("Heinz")

Heinz was a broker of UBS from February of 2001 through May of 2004. On September 4, 2012, Heinz was found guilty on three counts of conspiracy to commit wire fraud and two counts of substantive wire fraud.

e. Steven Goldberg ("Goldberg")

Goldberg was a Liability Manager at the GE/Trinity entities from August of 1999 through part of May of 2001. Thereafter, through part of 2006, he worked for another provider. Goldberg has been convicted of acts in violation of federal law while thus employed. Based on testimony at the criminal trial, Goldberg gave multiple providers "last looks" on various transactions involving municipal issuers in exchange for which CDR would receive additional fees and/or would receive intentionally losing bids on later transactions set up for another provider to win. (*U.S. v. Carollo*, 4/16/12 at 341, 342, 367).

For example, Goldberg testified that he provided a "last look" on a **Port of Oakland** transaction to a favored provider. (*U.S. v. Carollo*, 4/17/12 at 457-459). CDR had an informal agreement with the favored provider in connection with this transaction that it was going to be paid a back-end swap fee. (*U.S. v. Carollo*, 4/18/12 at 723). It was also revealed that the favored provider received last looks on transactions for other clients, including **Missouri Health and Education Facilities Authority, McAlester Public Works, Fairmount State**, and **Utah Housing**. (*U.S. v. Carollo*, 4/18/12 and 4/19/12 at 728, 745, 748, 933). These extra payments were never disclosed to CDR clients. (*U.S. v. Carollo*, 4/17/12 at 468-69). On May 18, 2012, Goldberg was found guilty on four counts of conspiracy to commit wire fraud and defraud the United States.

f. <u>Samuel Gruer</u> ("Gruer")

Gruer was a former vice president in JPMorgan's tax-exempt capital markets group. He took over JPMorgan's Municipal Derivatives trading desk, along with Hertz and MacFaddin, in 2000. He worked at JPMorgan from February of 2000 until June of 2006, when he left to go to Deutsche Bank. Gruer disclosed to FINRA that the DOJ has targeted him with respect to antitrust violations relating to municipal bonds while at JPMorgan. Gruer participated in or oversaw unlawful collusive discussions with other Defendants and co-conspirators conducted from JPMorgan's Municipal Derivatives trading desk or other venues. Gruer had discussions with, *inter alia*, Martin Stallone of IMAGE and the CW, as described below.

g. <u>Peter Grimm</u> ("Grimm")

Grimm was a Vice President and Liability Manager at the GE/Trinity entities from February of 2000 until at least November of 2006. On May 18, 2012, Grimm was found guilty on three counts of conspiracy to commit wire fraud and defraud the United States.

h. James Hertz ("Hertz")

Hertz worked at JPMorgan from 1998 until December of 2007. He was former vice president in JPMorgan's tax-exempt capital markets group. Along with Douglas MacFaddin and Samuel Gruer, he came over to JPMorgan from Chase Bank and, along with them, assumed control over JPMorgan's Municipal Derivatives trading desk in 2000. His disclosures to the Financial Industry Regulatory Authority ("FINRA") indicate that he was targeted by the DOJ for "conduct on the municipal derivatives marketing desk." Hertz participated in or oversaw unlawful collusive discussions with other Defendants and co-conspirators conducted from JPMorgan's Municipal Derivatives trading desk or other venues. JPMorgan fired Hertz after learning he was a subject of the DOJ criminal investigation. On November 30, 2010, Hertz pled guilty to various acts of bid rigging in violation of federal antitrust and fraud laws.

i. Patrick Marsh ("Marsh")

Marsh served as Senior Managing Director in Municipal Finance Products at Bear Stearns until he left to join Deutsche Bank in April of 2005. He disclosed to FINRA that the DOJ has targeted him with respect to antitrust violations relating to municipal bonds while at Bear Stearns and has also disclosed that he is likely to be sued by the SEC for his conduct with respect to such bonds while he was at Bear Stearns.

j. Douglas MacFaddin ("McFaddin")

McFaddin was former head of cash derivatives and marketing at JPMorgan. He took over JPMorgan's Municipal Derivatives trading desk, along with Hertz and Samuel Gruer, in 2000. MacFaddin left JPMorgan in March of 2008 after learning he was a subject of the DOJ criminal investigation. His disclosures to FINRA indicate that he was targeted by the DOJ for

"conduct on the Municipal Derivatives marketing desk." MacFaddin participated in or oversaw unlawful collusive discussions with other Defendants and co-conspirators conducted from JPMorgan's Municipal Derivatives trading desk or other venues. MacFaddin also participated in illegal activity with respect to Jefferson County, Alabama that is described below.

k. Martin McConnell ("McConnell")

McConnell worked with Saunders in the Municipal Derivatives marketing department at Wachovia and came to hold the position of Managing Director of Marketing. He worked at Wachovia from May of 2005 to July of 2008. His disclosures to FINRA state that he was targeted by DOJ "concerning antitrust and other violations involving contracts related to municipal bonds." Saunders participated in or oversaw unlawful collusive discussions with other Defendants and co-conspirators conducted from Wachovia's Municipal Derivatives trading desk or other venues. He participated in unlawful collusive discussions with, *inter alia*, Campbell of Bank of America and Martin Stallone of IMAGE, as described below.

l. Philip Murphy ("Murphy")

Murphy was the former head managing director of Bank of America's Municipal Derivatives department and one of the ringleaders of the alleged conspiracy. Murphy participated in or oversaw unlawful collusive discussions with other Defendants and co-conspirators conducted from Bank of America's Municipal Derivatives trading desk or other venues. Murphy had numerous communications, with, *inter alia*, Martin Stallone of IMAGE, as described below. Murphy was also the recipient of the aforementioned May 11, 2002 e-mail regarding IMAGE and the recipient of June 28, 2002 e-mail on kickbacks from Campbell described below. Murphy left Bank of America in September of 2002 and is now a principal at Winters, the website of which says that "[h]e is one of the pioneers of the municipal derivative

and investment agreement business having developed or improved many of the structures being used in the market today."

m. Dean Pinard ("Pinard")

Pinard was a former manager of Bank of America's Municipal Derivatives department. He was put on administrative leave by Bank of America on February 12, 2007. Pinard participated in or oversaw unlawful collusive discussions with other Defendants and co-conspirators conducted from Bank of America's Municipal Derivatives trading desk or other venues. He was also the recipient of the March 11, 2002 e-mail from Phil Murphy described below that discussed the provision of secret kickbacks to IMAGE for its participation in the alleged conspiracy.

n. Shlomi Raz ("Raz")

Raz worked on structured credit and interest rate derivative marketing at JPMorgan. He worked at JPMorgan from July of 1996 to July of 2003. His disclosures to FINRA state that he was targeted by DOJ "concerning antitrust and other violations involving contracts related to municipal bonds." Raz participated in or oversaw unlawful collusive discussions with other Defendants and co-conspirators conducted JPMorgan's Municipal Derivatives trading desk or other venues. *See, e.g., infra* ¶ 172.

o. Stephen Salvadore ("Salvadore")

Salvadore was Head of Municipal Derivatives and Municipal Cash Trading at Bear Stearns. He worked at Bear Stearns from 1999 to July of 2008. His disclosures to FINRA state that he was targeted by DOJ "concerning antitrust and other violations involving contracts related to municipal bonds."

p. Jay Saunders ("Saunders")

Saunders worked in the Municipal Derivatives marketing department at Bank of America from 1999 to 2003 and then moved over to Wachovia, where he came to serve as director of marketing for its derivatives department. Saunders left Wachovia in July of 2008. His disclosures to FINRA state that he was targeted by DOJ "concerning antitrust and other violations involving contracts related to municipal bonds."

q. Robert Taylor ("Taylor")

Taylor was a trader of Municipal Derivatives at Lehman. He participated, *inter alia*, in discussions with Martin Stallone of IMAGE relating to the alleged conspiracy, as described below.

r. James Towne ("Towne")

Towne was the former Managing Director of Piper Jaffray's Municipal Derivatives group. He worked at Piper Jaffray from 1996 to January of 2008. His disclosures to FINRA state that he was targeted by DOJ "concerning antitrust and other violations involving contracts related to municipal bonds." Towne participated in or oversaw unlawful collusive discussions with other Defendants and co-conspirators conducted from Piper Jaffray's Municipal Derivatives trading desk or other venues. These included many unlawful discussions with Campbell, among others. In addition, Campbell's June 28, 2002 e-mail on kickbacks to Piper Jaffray, CDR and Winters described below reflects communications that Towne had discussions on this topic with Campbell and Bank of America.

s. Michael Welty ("Welty")

Welty was a broker at UBS from January of 1999 through April of 2005. On September 4, 2012, Welty was found guilty on three counts of conspiracy to commit wire fraud.

t. Alexander Wright ("Wright")

Wright worked in JPMorgan's public finance department, as well as on its municipal swaps marketing desk. He had collusive discussions with, *inter alia*, Gary Heinz, as described below. Wright participated in or oversaw unlawful collusive discussions with other Defendants and co-conspirators conducted from JPMorgan's muni swaps marketing desk or other venues. On July 18, 2012, Wright pled guilty to conspiracy to commit wire fraud. Pursuant to his cooperation agreement, Wright was required to cooperate fully and truthfully with the government in their investigation, meet with the government at their request, review documents, answer questions, and testify in court at the UBS criminal trial. Some of his testimony is further discussed below.

u. Mark Zaino ("Zaino")

Zaino was a bidding agent at CDR, and then worked on UBS's Municipal Derivatives trading desk until he left the company in 2007. He had collusive discussions with, *inter alia*, Campbell, as described below. Zaino participated in or oversaw unlawful collusive discussions with other Defendants and co-conspirators conducted from UBS's Municipal Derivatives trading desk or other venues. On May 21, 2010, Zaino pled guilty to various acts of bid rigging in violation of federal antitrust and fraud laws. Zaino testified for the government at the UBS criminal trial. Some of his testimony is further discussed below.

v. Others

In the *CDR* case, the DOJ has also identified various other co-conspirators, including Jerrold Abrahams (of Citigroup Global Markets, Inc.), Kisti Shah (of UBS and JPMorgan), Leonard Feder, Gary Killian (formerly of Lehman), Dudley Roski, Gregory Schlionsky, James Tobin (formerly of Baum), Donald Travis, Scott Verch (formerly of Morgan

Stanley and Bank of America) and Brian Zwerner (formerly of Bank of America). On March 30, 2011, Zwerner pled guilty to various acts of bid rigging in violation of federal antitrust and fraud.

95. Individuals employed by the Broker Defendants or Broker Co-conspirators who have engaged in the illegal agreement, understanding and conspiracy include the following. These individuals were not randomly selected from Broker Defendants' or Broker co-conspirators' corporate directories, but are people who have acknowledged that they are targets of DOJ prosecution and/or have been identified by Bank of America as engaging in collusive conduct.

a. <u>David Lail</u> ("Lail")

Lail worked in Baum's Municipal Derivatives department. He was a kickback recipient with respect to the blind pool deals with CDC that are described below.

b. <u>Mary Packer</u> ("Packer")

Packer is President of PackerKiss, where she has worked since July of 2003. Her disclosures to FINRA state that she was targeted by DOJ "regarding certain matters involving transactions related to municipal bonds."

c. <u>Johan Rosenberg</u> ("Rosenberg")

Rosenberg is now President of, and was formerly a Vice President of, Sound Capital. Rosenberg had various communications with, *inter alia*, Campbell and the CW relating to the alleged conspiracy, as described below.

d. <u>Martin Stallone</u> ("Stallone")

Stallone, who joined IMAGE in 1999, is its Managing Director. Stallone had various communications with, *inter alia*, Murphy, Campbell, the CW, Gruer, Marsh, McConnell, and Taylor relating to the alleged conspiracy, as described below.

e. Michael Frasco ("Frasco")

Frasco is a Managing Director at Natixis, formerly CDC, with responsibilities for Municipal Derivatives. Frasco had various communications with, *inter alia*, the CW, as described below.

f. Douglas Goldberg ("Goldberg")

Goldberg was a Senior Vice President at CDR with responsibilities for Municipal Derivatives before leaving to join Deutsche Bank in September of 2006. Goldberg had numerous discussions with, *inter alia*, Campbell and the CW, as described below. His most recent FINRA disclosure indicates that he is under investigation. On January 29, 2010, Douglas Goldberg pled guilty to various acts of bid rigging in violation of federal antitrust and fraud laws.

g. Martin Kanefsky ("Kanefsky")

Kanefsky was the former owner and founder of Kane Capital. On August 12, 2010, Kanefsky pled guilty to various acts of bid rigging in violation of federal antitrust and fraud laws.

h. Dani Naeh ("Naeh")

Naeh worked on Municipal Derivatives at CDR until 2004, when he left to become a Managing Partner at ICS Venture Group Ltd. Naeh had discussions with, *inter alia*, the CW, as described below. On February 22, 2012, Naeh pled guilty to various acts of bid rigging in violation of federal antitrust and fraud laws.

i. Matthew Rothman ("Rothman")

Rothman was an employee of CDR. On March 11, 2010, Rothman pled guilty to various acts of bid rigging in violation of federal antitrust and fraud laws. He testified at the UBS criminal trial that he participated in a conspiracy to rig bids on municipal investment agreements, which included, at the direction of his supervisors, giving last looks to providers of municipal

investment agreements, soliciting courtesy bids, and signing false certifications that the bidding process was competitive when in fact it was not.

j. David Rubin ("Rubin")

Rubin was the founder, President and CEO of CDR. On December 30, 2011, Rubin pled guilty to various acts of bid rigging in violation of federal antitrust and fraud laws.

k. Zevi Wolmark ("Wolmark")

Wolmark was the Managing Director and CFO of CDR. On January 9, 2012, Wolmark's guilty plea regarding various acts of bid rigging in violation of federal antitrust and fraud laws was filed.

l. Evan Zarefsky ("Zarefsky")

Zarefsky was a Vice-President of CDR. On January 9, 2012, Zarefsky pled guilty to various acts of bid rigging in violation of federal antitrust and fraud laws.

m. Adrian Scott-Jones ("Scott-Jones")

Scott-Jones was the founder of CFP. On September 8, 2010, Scott-Jones pled guilty to various acts of bid rigging in violation of federal antitrust and fraud laws.

STATE ATTORNEY GENERAL INVESTIGATIONS

96. As a result of their investigation, Select State Attorneys General were prepared to make the following allegations against GEFCMS (which GEFMCS neither admits nor denies) as set forth in their Settlement Agreement:

> 13. The municipal reinvestment business of GEFCMS consisted of three platforms that provided Guaranteed Investment Contracts: GE Funding Capital Market Services, Inc. (f/kla FGIC Capital Market Services, Inc.) and two affiliates- Trinity Funding Company, LLC and Trinity Plus Funding Company, LLC (together "GEFCMS Platforms" or individually "GEFCMS Platform"). The GEFC MS Platforms were created in the early-to-mid 1990s.

14. The GEFCMS Platforms personnel included , among others, traders who bid for Guaranteed Investment Contracts that were subsequently placed with a GEFCMS Platform.

GEFCMS's Illegal Conduct

15. The Guaranteed Investment Contract industry is a relationship-driven business. Access to these transactions is largely controlled by brokers, who decide which providers to solicit for a particular competitively bid transaction. Simply put, not every provider gets an opportunity to "see" and bid on a transaction. Therefore, a trader has reasons to gain favor with the brokers who act as gatekeepers over the ultimate selection of a provider.

16. The broker/trader relationship can contribute to a smooth, efficient and ultimately competitive market for Guaranteed Investment Contracts, ensuring that the Issuer enters into an appropriate investment and obtains a competitive rate. But this relationship also enabled certain providers, brokers and traders to put their interests ahead of those of the issuers of Municipal Bonds.

17. Certain traders affiliated with the GEFCMS Platforms ("Traders") engaged in a variety of illegal activities on certain transactions during the period 1999 through 2005. The individuals who were engaged in those activities are no longer affiliated with GEFCMS or the GEFCMS Platforms, and the GEFCMS Platforms stopped bidding on Guaranteed Investment Contracts entirely in 2010. Sometimes the Traders' activities involved a broker orchestrating bids for a Guaranteed Investment Contract, including courtesy or other purposely non-winning bids, to create the appearance of competition. On occasion, certain Traders communicated with traders of other providers and discussed certain terms of a particular transaction. In other instances, despite the broker's and winning provider's certification to the Issuer that no bidder had reviewed a competitor's bid, submitted a courtesy bid, or received a "last look," that was precisely what had occurred.

18. The GEFCMS Platforms became involved in these transactions through one or more of the Traders and, in certain transactions, reduced the amount of interest the GEFCMS Platforms otherwise would have paid to issuers, resulting in a financial gain to the GEFCMS Platforms. Certain of the Traders' unlawful activities caused certain Issuers throughout the country to receive less favorable terms on Guaranteed investment Contracts that were the subject of those activities than they would have received otherwise.

19. By and large the aforementioned conduct was directed by several powerful Guaranteed Investment Contract brokers and carried out with the assistance of a number of individuals employed by participating providers.

20. The conduct involving the Traders, which occurred on certain transactions, differed from transaction to transaction. For certain transactions, brokers might decide in advance the provider it determined should win the bid.

21. For other transactions that the Traders sought to win, the broker might inform the Trader of the other providers' bids so that the Trader could adjust his own bid to ensure he was the successful bidder. Certain Traders understood that sometimes the broker would preordain that the Trader would be the winning bidder. All of this conduct, however, was obscured from the Issuer, who believed that its broker was obtaining competitive bids.

22. Sometimes, brokers provided Traders with confidential information on competitors' bids. This "last look" opportunity enabled the Traders to be less aggressive with their bidding on a given transaction and hence, change their bids just enough to win rather than provide the Issuer with what it expected through a competitive bidding process-the best terms available on the market. In some cases, the “last look" enabled a GEFCMS Platform to win a deal it might otherwise have lost.

23. At times, these illegal activities to manipulate and steer business to the GEFCMS Platforms for Guaranteed Investment Contracts were further concealed from the Issuer by means of the false representations that both the broker and Traders (as well as the other participating providers) made on the respective certifications mandated by the federal safe harbor regulations (respectively, the "Certificate of Bidding Agent" and the "Bid Form”) and attested to by the broker and Traders. Moreover, the Certificate of Bidding Agent expressly stated that the Issuer could rely on the representations made in the certificate.

Traders Facilitated Undisclosed Payments to Brokers

24. In addition to the disclosed fees brokers received for their role in competitive Guaranteed Investment Contract transactions, on some occasions, the Traders facilitated undisclosed payments to certain brokers.

> 25. Beginning in February 2000 and lasting until mid-2004, in connection with a limited number of transactions, the Traders facilitated undisclosed payments to certain Guaranteed Investment Contract brokers that were identified as "swap fees" for inter-dealer or "back-to- hack" swaps -- i.e. swaps with another swap counterparty that did not require the services of a broker.
>
> WHEREAS, based on this information, the Attorneys General are prepared to allege that. with respect to certain Guaranteed Investment Contracts, Traders and brokers engaged in conduct that allowed the broker to pre-determine which provider would win a bid by providing "last looks" and arranging to have providers submit courtesy bids and purposely non-winning bids and engaged in other deceptive, unfair or fraudulent conduct, including misrepresenting or omitting material facts, that deprived Issuers of Municipal Bonds of the benefits of fair competition among the Providers of Guaranteed Investment Contracts….

JPMORGAN

97. As a result of their investigation, Select State Attorneys General were prepared to make the following allegations against JPMorgan (which JPMorgan neither admits nor denies) as set forth in their Settlement Agreement:

> 28. Certain JPMC municipal derivatives desk employees ("Certain JPMC Marketers") engaged in a variety of illegal activities on certain transactions primarily during the period 2001 through at least 2005. The employees who were engaged in those activities are no longer employed by JPMC, and the Municipal Derivatives Desk has been closed. Sometimes Certain JPMC Marketers' activities involved a broker orchestrating bids for a Municipal Reinvestment Product, including courtesy or "cover" bids to create the appearance of competition. In other instances, a provider communicated directly with other providers to fix the price, rate, or key terms of a particular transaction. In a number of other instances, despite the broker's and winning provider's certification to the Issuer that no bidders had reviewed a competitor's bid, submitted a courtesy bid, or received' a "last look," that was precisely what had occurred.
>
> 29. JPMC participated in these transactions through one or more of its desk employees and obtained unjust profits as a result. Certain JPMC Marketers' unlawful activities caused certain Issuers throughout the country to receive less favorable terms on

Municipal Bond Derivatives that were the subject of those activities than they would have received otherwise.

JPMC Rigged Bids on Certain Municipal Bond Derivative Transactions

30. By and large the bid rigging was directed by several powerful Municipal Bond Derivative brokers and carried out with the assistance of a number of co-conspirator marketers employed by participating providers.

31. The bid-rigging involving Certain JPMC Marketers, which occurred on certain transactions, differed from transaction to transaction. For competitively bid transactions, brokers might identify in advance the provider it determined should win the bid and then arrange or "set up" the necessary additional bids to "cover" the winning provider's bid.

32. For a competitive transaction that JPMC sought to win, the broker might either inform the other bidders where their "cover" quote needed to be, *i.e.*, the rate or terms above or below JPMC's bid, or inform the JPMC Marketer of the other providers' bids so that JPMC could adjust its own bid to ensure it was the successful bidder. Certain JPMC Marketers understood that sometimes the broker would preordain that JPMC would be the winning bidder and sometimes JPMC would need to provide the courtesy bid to protect another competitor's bid. All of this conduct, however, was obscured from the Issuer, who believed that its broker was obtaining "competitive" bids.

33. At times, in return for the business referral from the JPMC Marketer, it was understood that the broker would arrange to provide JPMC with confidential information on competitors' bids. This "last look" opportunity, which might be given on the very deal referred to the broker, or might be afforded in the future, enabled JPMC to be less aggressive with its bidding on a given transaction and hence, change its bid just enough to win rather than provide the Issuer with what it expected through a competitive bid process-the best terms available on the market. In some cases, the "last look" enabled JPMC to win a deal it might otherwise have lost to a more competitive provider. While in some instances the last look resulted in a benefit to the Issuer, in other instances the last look resulted in JPMC adjusting its bid to the detriment of the Issuer on a specific transaction. The long term effect of last looks is to artificially alter the market level of bids.

34. At times, these illegal activities to manipulate and steer business to JPMC for competitive Municipal Reinvestment Products were further concealed from the Issuer by means of the false representations that both the broker and Certain JPMC Marketers (as well as the other participating providers) made on the respective certifications mandated by the federal safe harbor regulations (respectively, the Bid Form and "Certificate of Bidding Agent") and attested to by the broker and Certain JPMC Marketers. Moreover, the Certificate of Bidding Agent expressly stated that the Issuer can rely on the representations made in the certificate. JPMC Deceived Issuers on Certain Negotiated Interest Rate Risk Management Products

35. Throughout the time period, 2001 through at least 2005, JPMC was well-positioned to provide certain types of Interest Rate Risk Management Products, particularly index-based swaps. These offerings are among the most straightforward in the derivatives market and the most profitable, attracting many providers, including JPMC.

36. As alleged in paragraph 14, above, Interest Rate Risk Management Products are not subject to the federal safe harbor regulations concerning the fair market value of an investment and, as a result, many times issuers entered into these financial derivatives by negotiating directly with a provider through a financial advisor or swap advisor. To protect itself against providers seeking to take advantage of the lack of competitive bidding and thus ensure it received "on market" rates, the Issuer sometimes required its advisor to obtain "market pricing letters" and "check-away prices."

37. At various times, JPMC's marketing materials for prospective clients who were considering whether to enter into negotiated Interest Rate Risk Management Products suggested that Issuers could "feel comfortable with swap pricing" by asking their financial advisors or swap advisors "to 'check away' pricing in the market through the use of other providers ...." In effect, JPMC's marketing materials suggested to Issuers that shadow pricing could provide them with a competitive benchmark to assess the fairness of JPMC's pricing. On a number of occasions, however, Certain JPMC Marketers agreed with certain competitor providers, brokers and swap advisors to arrange and procure non-competitive shadow or check-away prices.

38. The activities of Certain JPMC Marketers differed from transaction to transaction. For instance, JPMC might learn that

> the swap advisor planned to contact other providers and use the check-away process to measure the fairness of JPMC's pricing. One or more Certain JPMC Marketers might then contact these other providers to ensure that they gave the advisor "shadow prices" that were higher (or lower, depending on the type of swap) than JPMC's prices in order to make it appear as if JPMC's pricing was competitive. It was either understood based on a prior course of dealing or expressly communicated that JPMC would return the favor when necessary. At times, Certain JPMC Marketers misrepresented the profitability, mid-market level or fairness of the negotiated price to the Issuer or otherwise misled the Issuer as to competitiveness of the negotiated price.
>
> 39. In furtherance of the conduct alleged in the paragraphs 1 to 38 above, JPMC engaged in deceptive, collusive, unfair or fraudulent conduct that concealed or facilitated the anticompetitive activity. As a result of these activities, JPMC and other participating providers were able to fix their profit margins on affected transactions at artificially high levels.
>
> WHEREAS, based on this information, the Attorneys General are prepared to allege that JPMC and other providers and brokers: (a) unreasonably restrained competition in the marketing, sale and placement of certain Municipal Bond Derivatives by rigging bids, and fixing prices and other terms and conditions with respect to specific Municipal Bond Derivatives transactions; (b) agreed not to bid for certain Municipal Bond Derivatives; or (c) engaged in other anticompetitive, deceptive, unfair or fraudulent conduct, including misrepresenting or omitting material facts, that deprived Issuers of Municipal Bonds of the benefits of competition among the Providers of Municipal Bond Derivatives . . . .

BANK OF AMERICA

98. As a result of their investigation, Select State Attorneys General were prepared to make the following allegations against Bank of America (which Bank of America neither admits nor denies) as set forth in their Settlement Agreement:

> 25. The broker/provider relationship can contribute to a smooth, efficient and ultimately competitive market for Municipal Bond Derivative transactions, ensuring that the Issuer enters into an appropriate investment and obtains a competitive rate. But this relationship also enabled certain providers and brokers to engage in an illegal scheme intended to put their mutual pecuniary

interests ahead of those of the Municipal Bond Derivative clients they represented.

26. Certain BAC employees' participation in the scheme began at least as early as mid-1998 and continued through at least 2003. Other providers' and brokers' participation in the scheme began before rnid-1998 and in some cases continued beyond 2003. At times providers had a classic "hub and spoke" relationship with the broker orchestrating bids and courtesy or other intentionally losing bids to foster the appearance of competition. At other times certain providers engaged in direct "horizontal" communications to fix prices for bids, rates or key terms of the transaction. And finally, in many instances, despite the brokers' certification to the Issuer that no bidders had reviewed a competitor's bid, submitted a courtesy bid, or received a "last look," that was precisely what occurred.

27. BAC and other providers and brokers were principal players in the conduct and obtained unjust profits as a result. The wrongful conduct caused Issuers in virtually every state, district and territory in the United States to be paid artificially suppressed rates or yields on Municipal Bond Derivative transactions.

28. By and large the bid-rigging was directed by several powerful Municipal Bond Derivative brokers. For competitively bid transactions, a broker would identify in advance the provider it determined should win the bid and then arranged or "set up" the necessary additional bids to be less competitive than the winning provider's bid.

29. For a competitive transaction that a provider sought to win, for example, the broker would either inform the other bidders where their less competitive quote needed to be, i.e., the rate or terms above or below the designated provider's bid, or inform the designated provider of the other providers' bids so that the designated provider could adjust its own bid to ensure it was the successful bidder. The designated provider understood that sometimes the broker would determine in advance that the designated provider would be the winning bidder; and that at other times, the designated provider would need to provide the courtesy bid to protect another competitor's bid. All of this conduct, however, was obscured from the Issuer, who believed that its broker was obtaining "competitive" bids.

30. Providers knew that their chances of winning a Municipal Bond Derivative contract were greatly enhanced if they referred their bank's clients to certain brokers. In return for the business referral, it was understood that the broker would sometimes arrange to provide the referring provider with inside information on competitors' bids. This "last look" opportunity, which might be given on the very deal referred to the broker, or might be afforded in the future, enabled the provider to be less aggressive with its bid and hence, adjust its bid just enough to win rather than providing the Issuer with what it expected through a competitive bid process-- the best terms available on the market. In some cases, the "last look" enabled BAC or another provider to win a deal it might otherwise have lost to a more competitive provider. In some cases the last look resulted in the provider adjusting its bid to the detriment of the Issuer on a specific transaction. The long term effect of last looks is to artificially impact the market level of bids.

31. The plan to steer business to BAC and other providers for competitive Municipal Investment Products was hidden from the Issuer by means of false representations that the broker and conspiring providers made on the respective certifications mandated by the federal safe harbor regulations (respectively, the Bid Form and "Certificate of Bidding Agent") and to which the broker and conspiring marketers attested. Moreover, the Certificate of Bidding Agent expressly stated that the Issuer can rely on the representations made in the certificate.

32. In addition, from 1998 through at least 2005, certain providers, including BAC, were well-positioned to provide certain types of Municipal Risk Management Products, particularly index-based swaps. These offerings are among the most straightforward in the derivatives market and the most profitable, leading to significant competition among the providers, including BAC.

33. As alleged in paragraph 14, above, Municipal Risk Management Products are not subject to the federal safe harbor regulations concerning the fair market value of an investment and, as a result, many times Issuers resorted to entering into these financial derivatives by negotiating directly with a provider through a financial advisor or swap advisor. To protect itself against providers seeking to take advantage of the lack of competitive bidding and thus ensure it

received "on market" rates, the Issuer sometimes required its advisor to obtain "market pricing letters" or "check-away prices".

34. Certain providers defeated the purpose of these market checks by agreeing with other providers to arrange and procure fictitious market rates in order to cause the Issuer to believe it was obtaining a fair and reasonable rate on its Municipal Risk Management Products when, in fact, the Issuer was not.

35. In some cases, BAC or another swap provider negotiating with an Issuer on a transaction would, either directly or indirectly through a swap advisor, direct a co-conspirator swap provider not involved in the transaction to give the negotiating swap provider a written valuation opinion that contained an inflated rate.· The negotiating provider would give the "independent" valuation to the Issuer as "proof' of the reasonableness of its pricing. In exchange for the valuation, and unknown to the Issuer, the swap provider who executed the swap with the Issuer would pay a fee to the swap provider that provided the valuation opinion.

36. In other instances, rather than engaging a third-party swap advisor to provide it with a market pricing letter, the swap advisor engaged by the Issuer to handle the transaction and acting in concert with the negotiating swap provider would provide its own valuation to the Issuer. On many of these occasions, the purportedly objective valuation was false and intended to cover the negotiating provider's pricing on the Municipal Derivative.

37. And, in other instances, the swap provider that was negotiating with the Issuer would learn that the swap advisor planned to contact other providers and use the check-away process to measure the fairness of the negotiating provider's proposed rates. The negotiating provider would contact these other providers and ensure that the providers gave the advisor "shadow prices" that were higher (or lower, depending on the type of swap) than the negotiating provider in order to make it appear as if the negotiating provider's proposed rates were competitive, when they were not. On those occasions, it was either understood based on a prior course of dealing-- or expressly communicated- -that the negotiating provider would reciprocate the favor when necessary.

38. The illegal bidding practices related to Municipal Bond Derivatives were profitable for many providers. As a result of their secret arrangements, marketers were able to secure Municipal Bond Derivatives for their companies that, absent collusive conduct, may have been awarded to other providers, or

awarded on better terms for the Issuer. In either case, the wrongful conduct injured Issuers and enabled BAC and other providers to earn more profit than they would have otherwise.

39. The conduct also enriched the brokers with whom providers conspired through the increased referrals and business steered to them as a result of the *quid pro quo* arrangement. In addition to the increased business and accompanying disclosed fees brokers receive for their role in a competitive or negotiated Municipal Bond Derivative transaction, on numerous occasions providers made undisclosed gratuitous payments to certain select brokers in exchange for their assistance in ensuring that the provider making the payment won certain Municipal Bond Derivative transactions.

40. In some instances, the undisclosed gratuitous payments that BAC and other providers made to brokers were disguised as "fees" for false market pricing letters, other times as "commissions" for interdealer or "back-to-back" swaps-- swaps between these providers that invariably did not require the services of a broker but would not unduly raise suspicions, and certain times these providers just made payments to brokers to reward past deals and encourage future business.

41. Brokers, bidding agents and swap advisors all owe a fiduciary duty to Issuers that engage them to assist in a Municipal Bond Derivative transaction and, as such, are required to act for the benefit of the Issuer. As a fiduciary, the broker has a duty to disclose to its principal, the Issuer, all material information, including the fees and compensation it received pursuant to the transaction. BAC and other providers understood that undisclosed payments to brokers, and the brokers' acceptance of such payments was a breach of that duty and, equally as important, compromised the broker's duty to act in the best interest of its principal.

BAC Uncovers Evidence of the Relevant Conduct, Self-Reports to Regulators and Seeks Leniency

42. BAC uncovered evidence of improper bidding practices and BAC voluntarily self reported this evidence to, among others, the Antitrust Division of the United States Department of Justice, the Securities and Exchange Commission, the Federal Reserve Bank and the Office of the Comptroller of the Currency. At the same time, BAC applied to the United States Department of Justice's Antitrust Division's Corporate Leniency Program. Subsequently, BAC provided substantial cooperation to the

> Antitrust Division's investigation into bid rigging and other wrongdoing in the Municipal Bond Derivatives industry. As a result of its decision to voluntarily disclose evidence of wrongdoing and its agreement to cooperate and pay restitution to parties injured by the improper conduct, the Antitrust Division accorded BAC Conditional Leniency on January 8, 2007. BAC's conditional leniency was granted pursuant to Part A of the Antitrust Division's Leniency Policy, which is the highest form of leniency the Antitrust Division can provide.
>
> 43. In addition to its cooperation with the Antitrust Division, BAC provided substantial cooperation to the Attorneys General's Investigation and other regulatory bodies conducting parallel investigations. BAC's cooperation has been valuable to the Attorneys General's Investigation.
>
> WHEREAS, based on this information, the Attorneys General are prepared to allege that BAC and other providers: (a) engaged in a scheme to unreasonably restrain competition in the marketing, sale and placement of Municipal Bond Derivatives, by, among other means, rigging bids, and fixing prices and other terms and conditions of Municipal Bond Derivatives; (b) agreed with certain other providers and brokers in a scheme to engage in unfair and deceptive trade practices in the marketing, sale and placement of Municipal Bond Derivatives; and/or (c) engaged in unfair and deceptive trade practices in the marketing, sale and placement of Municipal Bond Derivatives, including, but not limited to, making false statements and omitting material facts . . . .

UBS

99. As a result of their investigation, Select State Attorneys General were prepared to make the following allegations against UBS (which neither admitted nor denied these allegations) as set forth in their Settlement Agreement:

The Conduct of the UBS Marketers

> 26. UBS's MRD business was conducted in part by Ghavami, Heinz, Zaino, Mike Welty and two other individuals (collectively, the "UBS Marketers").
>
> 27. The UBS Marketers engaged in a variety of illegal activities on certain transactions primarily during the period 2001 through at least 2004. Sometimes their activities involved a broker

orchestrating bids for a Municipal Reinvestment Product, including courtesy or "cover" bids to foster the illusion of competition. In other instances, a provider communicated directly with other providers to fix the price, rate, or key terms of a particular transaction. In a number of other instances, despite the brokers' and winning providers' certification to the Issuer that no bidders had reviewed a competitor's bid, submitted a courtesy bid, or received a "last look, "that was precisely what had occurred.

28. UBS participated in these transactions through one or more of the UBS Marketers and obtained unjust profits as a result. The UBS Marketers' unlawful activities caused certain Issuers throughout the country to receive less favorable terms on Municipal Bond Derivatives that were the subject of those activities than they would have received otherwise.

UBS Rigged Bids on Certain Municipal Bond Derivative Transactions

29. By and large the bid-rigging was directed by CDR and several other powerful Municipal Bond Derivative brokers and carried out with the assistance of a number of co-conspirator marketers employed by participating providers. At UBS, these activities were carried out by the UBS Marketers. The UBS Marketers who were engaged in those activities are no longer employed by UBS, and the MRD has been closed.

30. The bid-rigging, which occurred on certain transactions, differed from transaction to transaction. For example, in a "competitively bid" transaction, a broker might identify in advance the provider it determined should win the bid and then arrange or "set up" the necessary additional bids to be less competitive than the winning provider's bid. If the transaction was one UBS sought to win, the broker might either inform the other bidders where their intentionally losing bid, known as a "cover" quote needed to be, or it might inform the participating UBS Marketer of the other provider's bids so that UBS could adjust its own bid to ensure it was the successful bidder. UBS marketers understood that sometimes the broker might decide that UBS would be the winning bidder and sometimes UBS might need to provide the courtesy bid to protect another competitor's bid. All of this conduct, however, was obscured from the Issuer, who believed that its broker was obtaining "competitive" bids.

31. In return for the UBS Marketers steering business to CDR and other brokers, the brokers would sometimes arrange to provide the UBS Marketers with confidential information on competitors'

bids. This "last look" opportunity which might be given on the very deal referred to the broker, or might be afforded in the future, enabled UBS to be less aggressive with its bidding on a given transaction and hence, change its bid just enough to win. In some cases, the "'last look" enabled UBS to win a deal it might otherwise have lost to a more competitive provider. While in some instances the last look resulted in a benefit to the Issuer, in other instances the last look resulted in UBS adjusting its bid to the detriment of the Issuer on a specific transaction. The long term effect of last looks is to artificially impact the market level of bids.

32. The instances of illegal manipulation and steering of business to UBS for competitive Municipal Reinvestment Products were concealed from individual Issuers by means of false representations that the broker and UBS (as well as the other participating providers) would make on the respective certifications mandated by the federal safe harbor regulations (respectively, the "Certificate of the Provider" and "Certificate of Bidding Agent") and to which the broker and the UBS Marketers attested. Moreover, both the Certificate of the Provider and the Certificate of the Bidding Agent expressly state that the Issuer can rely on the representations made in the certificates.

UBS Deceived Issuers on Certain Negotiated Municipal Interest Rate Risk Management Products

33. Throughout the relevant time period, 2001 through 2004, UBS was well positioned to provide certain types of Municipal Interest Rate Risk Management Products, particularly index-based swaps. These offerings are among the most profitable in the derivatives market, a fact that should have resulted in significant competition among the providers, including UBS.

34. As alleged in paragraph 1 1, above, Municipal Interest Rate Risk Management Products are not subject to the federal safe harbor regulations concerning the fair market value of an investment and, as a result, many times Issuers entered into these financial derivatives by negotiating directly with a provider through a financial advisor or swap •advisor. To protect itself against providers seeking to take advantage of the lack of competitive bidding and thus ensure it received "on market" rates, the Issuer sometimes required its advisor to obtain "market pricing letters" or "check-away prices."

35. At various times, UBS marketing materials intended for prospective clients contained a section specifically touting the advantages Issuers could obtain by engaging in a negotiated

process for Municipal Interest Rate Risk Management Products with one provider rather than engaging in a competitive bidding process. The wording of these materials varied from transaction to transaction. In an attempt to alleviate the concern that a negotiated process might result in the Issuer obtaining less than optimal terms and pricing by foregoing a competitive auction, UBS's marketing presentation might recommend that Issuers require their financial advisors and swap experts to "act as a safeguard" by contacting other providers during the process to provide "shadow pricing" to "validate the fairness of our pricing."

36. In effect, UBS's marketing materials suggested to Issuers that shadow pricing could provide them with a competitive benchmark to assess the fairness of UBS's pricing. On a number of occasions, the UBS Marketers defeated the purpose of these market checks by agreeing with certain competitor providers, brokers, and swap advisors to arrange and procure non-competitive shadow or check-away prices.

37. The activities of the UBS Marketers differed from transaction to transaction. For instance, UBS might learn that the swap advisor planned to contact other providers and use the check-away process to measure the fairness of UBS's pricing. One or more UBS Marketers might then contact these other providers to ensure that they gave the advisor "shadow prices" that were higher (or lower, depending on the type of swap) than UBS's prices in order to make it appear as if UBS's pricing was competitive. It was either understood based on a prior course of dealing - - or expressly communicated-- that UBS would return the favor when necessary.

38. In other instances, the swap advisor engaged by the Issuer to handle the transaction and acting in concert with UBS might provide its own pricing fairness opinion to the Issuer. On a number of these occasions, the purportedly objective valuation was false and intended to cover UBS's inflated pricing on the Municipal Derivative.

39. As a result of these activities, UBS and other participating providers were able to fix their profit margins on affected negotiated derivative transactions at artificially high levels.

UBS Facilitated Improper, Undisclosed Payments to Brokers

40. In addition to the increased business and accompanying disclosed fees brokers receive for their role in competitive or negotiated Municipal Bond Derivative transactions, on some

occasions UBS, through a subset of the UBS Marketers, facilitated improper, undisclosed payments to certain brokers in exchange for their assistance in ensuring that designated providers won certain Municipal Bond Derivative transactions.

41. Beginning at least as early as April 2001 and lasting until 2005, UBS facilitated improper, undisclosed payments to certain brokers that were identified as "swap fees" for inter-dealer or "back-to-hack" swaps- i.e., swaps between UBS and another provider that did not require the services of a broker but would not unduly raise suspicions. On other occasions UBS independently made improper, undisclosed payments to certain brokers to reward past deals and encourage future business. In some instances, the payments reduced the amount of money the Issuers received and continue to receive pursuant to the affected transactions.

42. Issuers engage brokers, bidding agents and swap advisors to act for the benefit of the Issuer and assist them in executing Municipal Bond Derivative transactions. As a broker, UBS bad a fiduciary duty to Issuers under certain state laws to disclose to the Issuers all material information, including the fees and compensation it received pursuant to the transaction. The unlawful activities alleged herein compromised any such duty.

WHEREAS, based on this information, the Attorneys General are prepared to allege that UBS and oilier providers and brokers: (a) unreasonably restrained competition in the marketing, sale and placement of certain Municipal Bond Derivatives by rigging bids, and fixing prices and other terms and conditions with respect to specific Municipal Bond Derivatives transactions; (b) agreed not to bid for certain Municipal Bond Derivatives; or (c) engaged in other anticompetitive, deceptive, unfair or fraudulent conduct, including misrepresenting or omitting material facts, that deprived Issuers of Municipal Bonds of the benefits of competition among the Providers of Municipal Bond Derivatives . . . .

EXAMPLES OF THE COORDINATION OF COLLUSIVE BIDDING THROUGH BROKERS

100. Bank of America's cooperating witness ("CW"), discussed earlier, learned of the collusive conduct after he joined Bank of America's Municipal Derivatives trading desk in April of 1999 on the recommendation of executives from Broker Defendant IMAGE. He discussed his sphere of operations with Bank of America's Murphy and Campbell, who assigned

him to work with IMAGE. In his work on Bank of America's Municipal Derivatives trading desk, the CW dealt primarily with Stallone.

101. Other traders at the Bank of America Municipal Derivatives trading desk worked with other brokers and providers in close proximity to the CW. Campbell, for example, worked with Towne of Piper Jaffray and Douglas Goldberg of CDR, among others. Within earshot of others, Murphy, Campbell, and other traders often changed the Bank of America's bids on transactions in response to information supplied by a Provider Defendant, a Broker Defendant, a Provider co-conspirator, or a Broker co-conspirator about competing bids by other providers. Murphy suggested to the CW that IMAGE would do the same for him. The CW conveyed this suggestion to Stallone, who was receptive to it.

102. Often, the traders on Bank of America's Municipal Derivatives trading desk knew ahead of time if Bank of America would get a deal. The traders understood that on some deals, a provider other than Bank of America would win, but also knew that Bank of America would make it up on other deals where it was agreed that it would be the winning bidder. Bank of America's traders understood that other Provider Defendants and Provider co-conspirators operated with a similar understanding. Murphy monitored the CW's work and expressed dissatisfaction if the CW did not know who would win a trade before it was bid. The collusive practices continued, however, even after Murphy was no longer employed by Bank of America.

103. The CW and other members of Bank of America's trading desk used various verbal cues to rig bids. One approach used by the CW was to ask if Bank of America's bid was a "good fit," in order to elicit from Stallone information on competing bids. Sometimes Stallone would say Bank of America's bid was "aggressive" and had to be reworked to conform

to the conspiratorially set bid range. At other times, Stallone would ask the CW to get Bank of America to a specific number, which was intended to be in furtherance of the alleged conspiracy. Stallone would also say that Bank of America could get more out of a particular deal if it would include a specified brokerage fee—a kickback to IMAGE for steering business to it. On occasion, if Stallone were unavailable, the CW would deal with Peter Loughead of IMAGE.

104. If Bank of America desired to be the prearranged winning bidder on a deal, the CW would tell Stallone it "really wanted to win that trade" or had an "axe" for that deal. Often, Stallone helped Bank of America on deals where the latter introduced IMAGE to the issuer and got it hired as a broker.

105. Stallone would also provide information to the CW about competing bids, saying how other providers saw the market or indicating that "the market was around here" or stating that another company "was working a long time on this and they see the market here" or promising that "I will call you when I get the market."

106. In addition to allowing the Provider Defendants and Provider co-conspirators to rig bids and allocate customers, the use of sham courtesy bids was important to ostensibly meet the IRS's safe harbor requirement of bids from at least three "reasonably competitive" providers, as described above. Stallone would often ask the CW to provide a courtesy bid where it was expected beforehand that Bank of America would not win. Likewise, there exists an audiotape of a conversation between Campbell and Towne of Piper Jaffray, where the latter told the former that JPMorgan wanted to win the trade in question and therefore wanted a courtesy bid from Bank of America that the bank could furnish after first being apprised of JPMorgan's bid. Towne specifically asked Campbell to adjust Bank of America's numbers to be closer and inferior to JPMorgan's bid.

107. The CW also was told by Stallone that the latter had requested and obtained courtesy bids from NatWest. On at least one occasion, Stallone told the CW that Bank of America should back down from a trade because it was slated to go to NatWest.

108. Similarly, Stallone told the CW at one point that he would get McConnell of Wachovia to submit a courtesy bid.

109. In another instance, Stallone said Taylor of Lehman was willing to submit a sham bid on business it did not want.

110. At one point, the CW met Frasco of CDC at the Plaza Hotel. Frasco said CDC had submitted bids on business it had no expectation of winning.

111. The CW also had collusive communications with Rosenberg of Sound Capital. On one deal, Rosenberg advised the CW of where Bank of America needed to be in order to win the trade. Rosenberg had a practice of soliciting sham bids from Bank of America's Municipal Derivatives trading desk.

112. Audiotapes from Bank of America's trading desk confirm other examples where the bank was solicited to provide collusive sham bids. In one instance, Campbell told Douglas Goldberg of CDR that Bank of America was willing to make a bid even though it was not interested in the transaction in question and had no intention of winning the bid. Bank of America often engaged in similar conduct at the request of other Defendants, including Piper Jaffray, IMAGE and Sound Capital, and continued to do so after Campbell and Murphy left its employ.

113. Defendants or co-conspirators like Bank of America, UBS, Lehman, Wachovia, CDC and JPMorgan also received "last looks" that had the purpose and effect of furthering their collusive bidding practices. In one taped conversation between Campbell and

Towne of Piper Jaffray, Towne stated that he gave Morgan Stanley an opportunity to lower its bid on a transaction through such a "last look."

114. One set of trades the CW worked on involved CDs on escrow accounts for Pennsylvania school districts and other entities, transactions about which Murphy and Campbell were fully briefed. Stallone told the CW that he would get sham courtesy bids from Wachovia, Lehman and JPMorgan, who had no expectations of winning these deals. Bank of America won the first ten deals. Then Stallone directed that Bank of America make a courtesy bid so that JPMorgan could win some deals. As these trades developed, Stallone would tell the CW if JPMorgan or Bank of America would be winning a bid. On several occasions, Stallone said that a particular deal needed to go to JPMorgan. Stallone at one point told the CW that JPMorgan understood that it had just won a big transaction and that Bank of America wanted this one. Stallone's contact at JPMorgan on these transactions was Gruer. Gruer reported to MacFaddin of JPMorgan and worked with Raz and Hertz of JPMorgan.

115. The issuing entities involved in some of these transactions involving CDs on escrow accounts included, *inter alia*, the **North Penn School District; the Cameron School District; the Downington Area School District; the Avonworth School District; the Carnegie Borough School District; the Tyne-Richland School District; the Sto-Rox School District; the Milville Area School District; the City of Scranton School District; the Township of Moon; the Harbor Creek School District; the Slippery Rock School District; the Upper Dauphin School District; the Penns Valley School District; the Township of Ross; the County of Luzerne; the Hamburg Area School District; the St. Mary's Area School District**; **the Springfield Township; the Pattiston Area School District; the County of Chester; and the Ulster Tobacco Asset Securitization Corporation**.

116. Numerous other collusive Municipal Derivatives transactions involving the Bank of America and other Defendants exist.

117. Among the collusive Municipal Derivative trades that were brokered though IMAGE, involved the Bank of America, and have been identified through audiotapes, the CW, and/or e-mails were those involving: (a) a forward purchase agreement for the **Pennsylvania Intergovernmental Cooperation Authority** (a deal where Chase Manhattan Bank, now part of JPMorgan, was one of the bidders); (b) investment agreements for the **Virgin Islands** (a deal where Lehman was one of the bidders); (c) a forward purchase agreement for the **Guam Power Authority** (another deal where Lehman was one of the bidders); (d) a deposit agreement involving **Springfield Township**; and (e) a forward purchase agreement for **Biola University**. Pinard, Murphy, Campbell, Zwerner (a trader on Bank of America's Municipal Derivatives trading desk), and/or James Engel (another trader on Bank of America's Municipal Derivatives trading desk) were involved in these deals for Bank of America. Stallone, Loughead, John Brenner and/or E. Gilbert Carpenter (IMAGE's Managing Director) were involved on behalf of IMAGE, and Taylor was involved on behalf of Lehman.

118. In a May 2010 Bloomberg article, the following example was given of the collusive dealings between Loughead of IMAGE and Pinard of Bank of America:

> Image coached Bank of America in winning an investment contract in Pennsylvania, according to an internal e-mail exchange in May 2001 between Bank of America trader Dean Pinard and Image's Peter Loughhead that was obtained by Bloomberg News. The e-mail was provided to Bloomberg by a person who got it from Bank of America and asked to remain unidentified.
>
> Loughead, who ran bids for Image, advised Pinard on how much to offer for managing the cash fund for a $10 million bond issued by the sewer authority of Springfield Township, York County, 100 miles (161 kilometers) west of Philadelphia.

> Pinard said in the e-mail to Loughead that Bank of America was willing to pay the town as much as $40,000 upfront to win the deal. Loughead wrote that the bank didn't need to pay that much. "Don't fall on any swords," Loughead wrote to Pinard the day before bids were submitted. He suggested that the bank could win the contract with a bid of slightly more than $30,000. The next day, Bank of America offered $31,000. It won the bidding, authority records show.

119. Among the collusive Municipal Derivatives trades that were brokered through Feld Winters, involved the Bank of America, and have been identified through audiotapes, the CW, and/or e-mails was a forward purchase agreement involving the **County of Santa Barbara, California** where the other bidders included AIG, JPMorgan and Wachovia. Murphy, Campbell, Zwerner and/or Dave Johnson (another trader on Bank of America's Municipal Derivatives trading desk) were involved for Bank of America. Jeff Feld (founder and CEO of Feld Winters) and Jeff Kandel (its President) were involved for Feld Winters.

120. Among the collusive Municipal Derivatives trades that were brokered through CDR, involved the Bank of America, and have been identified through audiotapes, the CW, and/or e-mails were: (a) a forward purchase agreement for the **University of Tampa**; (b) a forward purchase agreement for the **Tampa Port Authority**; (c) a transaction involving **Hillcrest Healthcare System**, where Bank of America engaged in bid collusion with JPMorgan; (d) forward purchase and escrow agreements involving the **Art College of Design**; (e) a transaction involving the **New Jersey Transit Corporation**; and (f) an escrow funding and a forward purchase agreement for the **Commonwealth of Massachusetts**. Pinard, Campbell, and/or Zwerner were involved in these trades for the Bank of America. Naeh or Douglas Goldberg were involved for CDR and, on the latter three of these trades, Zaino was involved for UBS. There is an audiotape of discussions between Campbell and Zaino discussing the pricing terms of the Massachusetts deal and the timing of Bank of America's bid.

121. CDR was also involved, with Bank of America and Kinsell, in suspect Municipal Derivatives transactions relating to refunding bonds issued by the **Oxnard, California, School District** and the **Delano, California Joint High School District**. These instances are also being investigated as part of the overall federal probe described below.

122. On one occasion, when another trader on Bank of America's trading desk asked Campbell if he would share his contact at CDR, Campbell responded, "[Y]ou don't want the responsibility associated with CDR." Douglas Goldberg and Neah of CDR at one point told the CW that if he could get Bank of America's bid to a specified level, he could win a particular deal.

123. Among the collusive Municipal Derivatives trades that were brokered through PackerKiss, involved the Bank of America, and have been identified through audiotapes, the CW, and/or e-mails were escrow deposit agreements involving the **Puerto Rico Electric Power Authority ("PREPA")**. There is an audiotape of a discussion between Zaino and Campbell on that portion of the PREPA transaction involving bidding on a defeasance escrow, where Zaino advised Campbell on how Bank of America should bid.

124. Among the collusive Municipal Derivatives trades that were brokered through Sound Capital, involved the Bank of America, and have been identified through audiotapes, the CW, and/or e-mails were: (a) a forward purchase agreement involving the **County of Santa Barbara, California**; and (b) escrow deposit agreements involving **Williams County**, where Bank of America, Wachovia and Lehman were bidders. With respect to the latter, Rosenberg of Sound Capital advised Campbell of other bids.

125. Among the collusive Municipal Derivatives trades that were brokered through Baum, involved the Bank of America, and have been identified through audiotapes, the

CW, and/or e-mails were swaps involving **Jackson Laboratories**. Audiotapes exist of discussions between Campbell and a Mr. Steinhauer of Baum where the latter shared competitive bidding information and advised Bank of America how best to structure a collusive bid.

126. Bank of America was also involved in numerous bid rigs with Baum and other Defendants and co-conspirators that involved GICs, debt service reserve funds, recycling funds or the like with respect to state or local governmental entities. These include trades involving: (a) the **Orange County, Florida, Health Facilities Authority ("OCHFA");** (b) the **Louisiana Local Government Environmental Facility & Community Development Authority ("LLGEFCDA")** ; (c) **the Illinois Development & Financial Authority ("IDFA");** (d) **Oklahoma Rural Enterprises ("ORE")**; (e) **the Western Virginia Hospital Finance Authority ("WVFHA")**; and (f) **Henderson County, Kentucky**. Campbell handled the deals for the WVFHA, ORE, LLGEFCDA, and Henderson County; he and Murphy jointly handled the deal for IDFA. Lail was the person at Baum who was principally involved in these deals. Gruer of JPMorgan submitted collusive sham courtesy bids on all of these deals except that involving ORE. A non-defendant provider whose identity is being kept confidential did likewise with respect to Henderson County.[3] Frasco of CDC did likewise with respect to Henderson County, the WVFHA, and IDFA. Campbell, on behalf of Bank of America, did likewise with respect to the OCHFA and LLGEFCDA, deliberately submitting bids that were less than what was needed to cover the debt service, liquidity, and credit enhancement on the bonds.

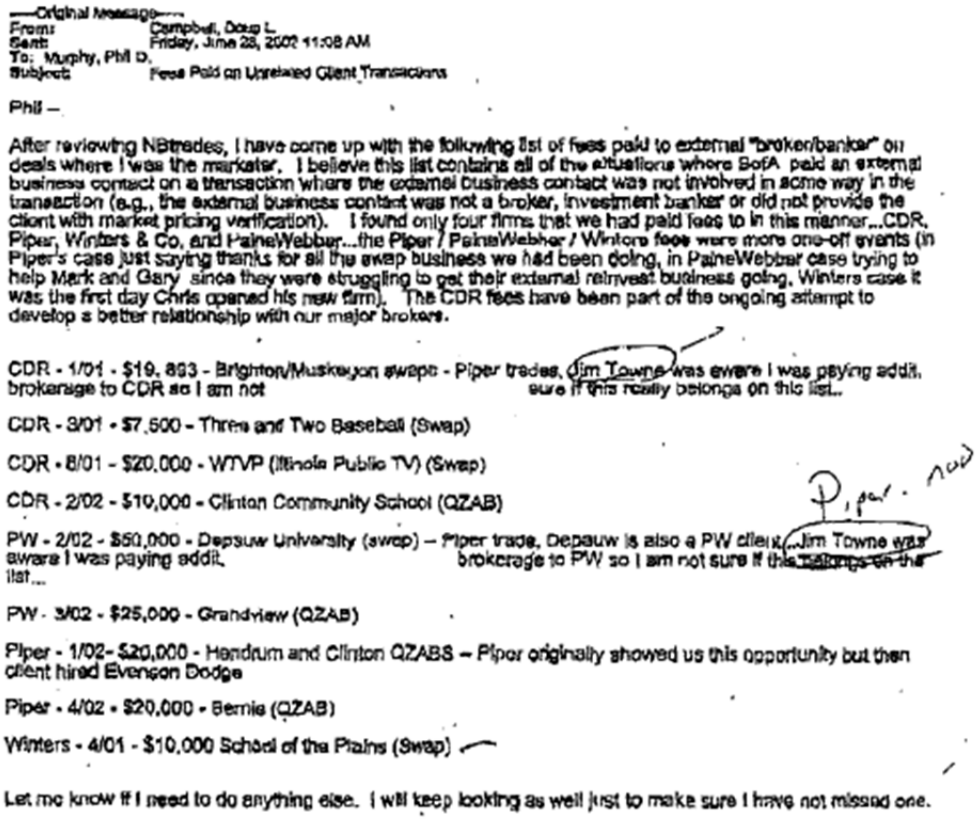
127. Campbell had numerous conspiratorial communications with Towne while the latter was at Piper Jaffray. The following examples are illustrative. Campbell would advise

[3] The identity of this provider is being kept confidential pursuant to agreement with the Bank of America, subject to any future Court order that requires disclosure.

Towne about which deals Bank of America wanted to win with the expectation that Towne would work with other providers to ensure such success. On one occasion, Campbell gave Towne Bank of America's prebidding indications on specific deals and Towne would respond with information on the level at which the deal would trade and the interest of other providers. On another occasion, Towne told Campbell to submit a courtesy bid by giving to Bank of America the expected bidding levels of other providers so that Campbell could respond with a less competitive bid, which he did. On a third occasion, Towne told Campbell about the levels at which JPMorgan and Solomon Smith Barney were bidding. Towne said Bank of America would not win that bid, but would get the next one, and Campbell agreed.

128. Bank of America rewarded Piper Jaffray and others with kickbacks for collusive activities in furtherance of the alleged conspiracy. This is illustrated by a June 28, 2002 e-mail that Campbell provided to Murphy, which contained a list of the situations where Bank of America paid an external business contact on a transaction where the external business contact was not involved in the transaction *(e.g.,* the external business contact was not a broker, investment banker or did not provide the client with market pricing verification)." The list showed that $182,393 was paid to CDR, Piper Jaffray, Winters, and PaineWebber (which had merged with UBS in October of 2000). The payments were described as a bid to build Bank of America's relationship with these companies or to say "thanks for all the swap business." The e-mail is reproduced below. Among other instances of bid rigging and kickbacks involving Bank of America is the $453 million GIC that Bank of America provided to the **City of Atlanta** in 2002, in which CDR acted as the broker and handled the bidding. Campbell was the Bank of America representative in charge of that deal and colluded with representatives at CDR to place

the winning bid. The IRS has indicated that the other bidders on the deal submitted "courtesy losing bids" to enable Bank of America to win the transaction.



—Original Message—
From: Campbell, Doug L.
Sent: Friday, June 28, 2002 11:08 AM
To: Murphy, Phil D.
Subject: Fees Paid on Unrelated Client Transactions

Phil –

After reviewing NBtrades, I have come up with the following list of fees paid to external "broker/banker" on deals where I was the marketer. I believe this list contains all of the situations where BofA paid an external business contact on a transaction where the external business contact was not involved in some way in the transaction (e.g., the external business contact was not a broker, investment banker or did not provide the client with market pricing verification). I found only four firms that we had paid fees to in this manner...CDR, Piper, Winters & Co, and PaineWebber...the Piper / PaineWebber / Winters fees were more one-off events (in Piper's case just saying thanks for all the swap business we had been doing, in PaineWebber case trying to help Mark and Gary since they were struggling to get their external reinvest business going, Winters case it was the first day Chris opened his new firm). The CDR fees have been part of the ongoing attempt to develop a better relationship with our major brokers.

CDR - 1/01 - $19, 863 - Brighton/Muskegon swaps - Piper trades, Jim Towne was aware I was paying addl. brokerage to CDR so I am not sure if this really belongs on this list..

CDR - 3/01 - $7,500 - Three and Two Baseball (Swap)

CDR - 6/01 - $20,000 - WTVP (Illinois Public TV) (Swap)

CDR - 2/02 - $10,000 - Clinton Community School (QZAB)

PW - 2/02 - $50,000 - Depauw University (swap) – Piper trade, Depauw is also a PW client...Jim Towne was aware I was paying addl. brokerage to PW so I am not sure if this belongs on the list...

PW - 3/02 - $25,000 - Grandview (QZAB)

Piper - 1/02- $20,000 - Herndrum and Clinton QZABS – Piper originally showed us this opportunity but then client hired Evenson Dodge

Piper - 4/02 - $20,000 - Bernie (QZAB)

Winters - 4/01 - $10,000 School of the Plains (Swap)

Let me know if I need to do anything else. I will keep looking as well just to make sure I have not missed one.

129. As yet another example, **Jefferson County, Alabama** (the county in which Birmingham is situated), paid Bank of America, JPMorgan, Bear Stearns, and Lehman $120.2 million in fees—six times above the prevailing rate—for $5.8 billion in interest rate swaps, and CDR was the County's adviser on these swaps. These transactions are being investigated by the DOJ and SEC. In particular, these banks charged Jefferson County about $50 million above prevailing prices for 11 of the swaps it bought between 2001 and 2004. Records show that none of the fees were disclosed to the County's commissioners. Porter, White & Co., a Birmingham-based financial advisory firm later hired by the County to analyze its swaps, said the banks received as much as $100 million in excessive fees on all 17 of the County's swaps.

Falsely believing that these swaps would help it save money in refinancing its sewer debt obligations, the County held "Investor Relations" seminars in 2003 and 2004 at a Birmingham hotel, led and sponsored by CDR, JPMorgan and Bear Stearns. Smaller municipalities that otherwise could not afford this type of training attended the seminars. On April 30, 2008, the SEC sued Larry Langford, Jefferson County's former county commission president and now Birmingham, Alabama's mayor, for fraud in allegedly accepting $156,000 from William Blount of Blount Parrish & Co ("Blount"), a Montgomery-based underwriter, while entering into the swaps. Blount and Bear Stearns jointly pitched the County on a swap deal worth $1.5 billion in early 2004. Several months later, in June of 2004, the County executed this swap, as well as another $380 million swap with Defendant Bank of America. The DOJ also is investigating the bankers and officials involved in these swaps. In May of 2009, JPMorgan indicated in a regulatory filing that it may be sued by the SEC in connection with the Jefferson County deals. As a result of these activities, the biggest municipal bankruptcy since Orange County, California's default in 1994 is looming.

130. In May of 2009, the SEC announced a settlement with JPMorgan over the Jefferson County scandal. The SEC alleged JPMorgan and former managing directors Charles LeCroy and MacFaddin made more than $8 million in undisclosed payments to close friends of certain Jefferson County commissioners. JPMorgan agreed to settle the SEC's charges by paying $50 million to the county for the purpose of assisting displaced county employees, residents and sewer rate payers; forfeiting more than $647 million in termination fees it claims the county owes under the swap transactions; and paying a $25 million penalty.

131. "In Jefferson County's case, the people who were allegedly doing the price fixing were right at the center of the scandal," said Christopher "Kit" Taylor ("Taylor"),

who ran the Municipal Securities Rulemaking Board, the public finance regulator in the United States, from 1978 to 2007. Taylor has stated that "[t]he legacy of this is going to resonate in state and local governments for years."

132. Other collusive transactions involving Municipal Derivatives deals where Bank of America was not involved (but for which it is liable as a co-conspirator) also exist.

133. For example, Baum was involved in many collusive Municipal Derivative deals other than those described above. In November of 2006, as part of a settlement with the IRS, it was disclosed that Baum illegally diverted profits on municipal bond deals. That settlement covered more than $2 billion worth of blind pool deals entered into between 1997 and 2001. The agency found evidence of bid rigging in these deals. With respect to 20 tax-exempt bond issuers from Arizona to Florida, Baum rigged GIC bids to allow the winning provider, most often CDC, to underpay for the GIC and simultaneously overpay for other investment agreements and remarketing fees, diverting arbitrage profits back to Baum to pay issuance costs. These unlawful bid riggings included GICs relating to (in addition to the OFCHA and WVFHA examples cited previously): (a) a $128 million pooled variable-rate bond deal for the **Arizona Health Facilities Authority ("AHFA")**; (b) two hospital revenue bond issues totaling over $300 million for **Ohio Hospital Capital, Inc.;** (c) $250 million in revenue bonds sold by **Knox County, Tennessee's Health, Educational & Housing Facility**; (d) $84 million in pooled variable-rate bonds sold by the **Missouri Health & Educational Facilities Authority**; and (e) $86.5 million in pooled variable-rate bonds sold by the **South Georgia Hospital Authority**. Lail was the primary representative for Baum on most of these deals. For all of them, Gruer of JPMorgan submitted to Lail collusive sham courtesy bids. On all of the deals except that involving AHFA, the non-defendant provider whose identity is being kept confidential pursuant

to an agreement with the Bank of America submitted to Lail collusive sham courtesy bids. The beneficiary of the collusive bidding on these deals was CDC, which won all six of them. In one case, it was found that CDC paid a large fee directly into the personal account of Lail, who provided the necessary bidding certifications.

134. As another example, the Butler Area School District and Butler County General Authority have sued JPMorgan for unlawful and anticompetitive collusion in connection with a 2003 swaption and a Constant Maturity Swap Amendment dated August 22, 2006. Butler has identified Gregory R. Zappala, Nicholas Falgione, and Michael Lena of JPMorgan, and Stallone, David J. Eckhart, Michael Garner and Robert Jones of IMAGE as being involved in the improper conduct with respect to it.

135. As yet another example, Feld Winters engaged in an unlawful kickback scheme with Pacific Matrix Financial Group, Inc. and O'Brien Partners, Inc. with respect to Municipal Derivative transactions in the 1990s.

136. As a further example, the IRS has scrutinized a $27 million bond sold by Pima County, Arizona's Industry Development Authority to help individuals buy homes that involved Société Générale and CDR. The transactions involved an abusive scheme that diverted investment earnings to deal participants. The IRS said that it "already has evidence of significant wire transfer payments… from [Société Générale] to the firm [CDR] that promoted and structured these transactions." The awarding of bids for GICs was prearranged to allow Société Générale to inflate various fees and divert illegal arbitrage as part of what the IRS called a "larger plan involving numerous other bond issuances." These payments constituted secret kickbacks between a Broker Defendant and a Provider Defendant in furtherance of the market allocation that was part of the claimed conspiracy.

137. Pima County was not the only instance of such illegal kickbacks flowing from Société Générale to CDR or vice versa. Others included the East Bay-Delta, California, Housing & Finance Agency; the Harrisonburg, Virginia, Redevelopment & Housing Authority; Pulaski County, Arkansas; the Albuquerque, New Mexico Region III Housing Authority ("Region III"); the Riverside-San Bernardino Housing & Finance Agency; and the San Diego Area Housing & Finance Agency. In connection with the Region III deal, the IRS noted that "Société Générale had an ongoing arrangement with CDR to promote similar abusive arbitrage devices," and that "CDR and Société Générale appear to have fixed pricing on financial products to facilitate the diversion of arbitrage."

ADMISSIONS ABOUT CONSPIRATORIAL ACTIVITIES FROM BROKER AND PROVIDER PARTICIPANTS

138. The recent guilty pleas and indictments, as well as testimony from the criminal trials, mentioned above reveal other examples of wrongdoing in furtherance of the alleged conspiracy.[4]

139. In the *U.S. v. Ghavami* criminal trial, Campbell testified for the government and explained the culpable conduct at issue that he performed for Bank of America:

> Q. And what did you do to make -- what did you do that made you guilty of those crimes? What was the conduct?
>
> A. Generally it was a conspiracy to allocate and rig bids in the muni reinvestment market.
>
> Q. And what does that mean?

[4] In these various documents, the co-conspirators with whom each defendant dealt or for whom each individual defendant worked are not identified by name. But, in most instances, the identities of those co-conspirators can be pieced together from an examination of one or more of the following: (a) identifying details contained in the respective indictments or informations; (b) information supplied by the DOJ in the *CDR* case; (c) individual defendants' FINRA reports; and (d) news articles that provide additional information.

A. Specific examples of that type of behavior would be, for example, when I was covering the bank's own clients, calling on the bank's governmental and not-for-profit clients with the bank's public financing commercial bankers, and there was a transaction that was subject to the bidding rules, I would work to get a broker hired to bid out that transaction knowing that if I got the broker hired I would be the winning bidder on that transaction. On transactions that were -- that I might have seen from sources other than the bank, I frequently had conversations with other providers or the broker about who was going to be the bidder, the winning bidder on the transaction, who would be on the bid list for those transactions. And we also talked about the rate or price at which those transactions would be done.

During the actual bid process, I frequently was given the ability to have a last look by a broker to improve my bid, in other words, to know what other bidders were bidding, or also if the situation was not very competitive I actually had the ability to lower my bid and still be the winning bidder by the brokers. I also, when asked by brokers, would provide an intentionally losing bid on transactions, a courtesy bid on certain transactions.

After the bid process, when I signed a -- the bidding certificate or the provider certificate on transactions where this conduct occurred, the state -- some or all of the statements on that bidding certificate were incorrect.

Q. Which brokers did you engage in this conduct with?

A. Chambers Dunhill Rubin, UBS PaineWebber, IMAGE, Sound Capital, George K. Baum. There were a variety of breakers [sic] over the -- over a period of time.

U.S. v. Ghavami, 8/13/13 at 2357-58.

140. At UBS, Zaino, who, as noted above, has entered a guilty plea, ran bogus auctions for investment deals on behalf of local government clients, delivering the contracts to preferred bidders in exchange for kickbacks. For example, on August 12, 2002, he and Naeh telephoned Steven Goldberg about the upcoming bid for an investment agreement and a swap

involving the **Missouri Health & Educational Facilities Authority** between UBS and another provider, including the amount the other provider would bid, the rate of the swap and the amount of the kickback CDR would receive. Four days later, there was a follow-up call where an agreement was reached. On August 20, 2012, Zaino caused CDR to receive a $475,000 kickback disguised in the form of a hedge fee.

141. As another example, on June 27, 2002 Zaino, acting on behalf of UBS, entered into a collusive agreement with Steven Goldberg and his employer in connection with two investment agreement transactions occurring on June 27 and June 28 that involved the **McAlester (Oklahoma) Public Works Authority**. On June 27, Steven Goldberg discussed with Zaino a swap between UBS and another provider that would be executed after the other provider was awarded the first agreement. Steven Goldberg said a co-conspirator at CDR would call Zaino when CDR needed "something" from Zaino. On the same day (but prior to bidding), Steven Goldberg and individuals at CDR discussed the kickback that CDR would receive under this arrangement. As a result, Zaino caused UBS to pay a kickback to CDR in the form of a hedge fee on behalf of Goldberg's employer. The following day, 45 minutes before final bids were due, Steven Goldberg asked a CDR representative for an "indication" on his employer's bid. Two minutes prior to final bidding, Steven Goldberg and CDR agreed on his employer's bid and the amount of a kickback to CDR. Zaino submitted an intentionally losing bid on behalf of UBS and CDR received the kickback from UBS.

142. Zaino also testified about UBS's practice of submitting intentionally losing bids to steer business to UBS's competitors (in this specific example, JPMorgan.)

> Q. Let's direct your attention to the period leading up to November 16, 2001. Did you become familiar with a transaction involving the **Pennsylvania Intergovernmental Cooperation Authority**?

A. Yes.

Q. How did you become involved with that deal?

A. It was a deal that was being bid competitively in the market and it was assigned to me.

Q. Who assigned it to you?

A. Mr. Ghavami.

Q. What did you do during that deal?

A. I submitted an intentionally losing bid.

Q. And what if anything else did you do during that bid?

A. I communicated with J.P. Morgan prior to the deal about our bid.

Q. You said you gave an intentionally losing bid. For what reason did you do so?

A. So that J.P. Morgan could win.

U.S. v. Ghavami, 7/31/12 at 694, 696.

143. Zaino also tesitifed about a transaction involving the **Municipality of Anchorage**, in which the transaction was set up for UBS to win, with the help of Doug Campbell at Bank of America.

Q. Start over. What did you ask Mr. Welty?

A. Whether or not the second transaction was being set up for UBS.

Q. What did Mr. Welty say to you?

A. He said, yes, it was.

Q. What if anything did he tell you to tell Mr. Campbell?

A. To submit an intentionally losing bid.

U.S. v. Ghavami, 8/1/12 at 766.

Zaino's testimony was confirmed by Douglas Campbell of Bank of America:

> Q. What is the reason you lost the Anchorage transaction, to your knowledge?
>
> …
>
> A. We intentionally lost the Anchorage transactions. Both of my bids on the Anchorage transactions were intentionally losing bids, courtesy bids.
>
> Q. Why did you do this?
>
> A. Because I was asked to do that by PaineWebber.

U.S. v. Ghavami, 8/15/13 at 2685.

144. In his testimony at the criminal trial of Carollo, Goldberg, and Grimm, Zaino stated that UBS would "set up" transactions by keeping people off the bid list who might be competitive, giving certain individuals a last look or allowing them to adjust their bid. (*U.S. v. Carollo* 4/27/12 at 2267-68). According to Zaino, UBS would facilitate a favored provider's winning certain bids by, among other things, giving last looks, so that UBS would then "turn around and do hedging transactions" with that provider and "charge excessive fees for those transactions." (*U.S. v. Carollo* 4/27/12 at 2269). Indeed, as Zaino testified, UBS had an agreement with a favored provider to pay additional fees if UBS helped them win the transaction at an attractive level to UBS. Zaino informed a representative of a favored provider where the other bidders were coming in and where he needed to be to beat the other bidders. (*U.S. v. Carollo* 4/27/12 at 2300).

145. For instance, according to Zaino, the **Rhode Island Housing** transaction, which was bid out by UBS in March 2002, was set up to allow FGIC, a favored provider, to win,

while simultaneously providing enough profit to pay UBS on a related Massachusetts interest rate swap.

> Q. How, if at all, were these two transactions related?
>
> A. The transactions on those days we were setting up for FGIC to win. FGIC was going to enter a swap hedging with respect to the Rhode Island transaction, so anything we could do to help them win those transactions, they would repay us, some of those fees via the swap transaction hedging related to Rhode Island.

U.S. v. Carollo, 4/27/12 at 2270.

> Q. What occurred during the bidding of this transaction?
>
> A. I helped Peter Grimm and lowered his bid by three basis points.
>
> Q. Why did you do that?
>
> A. Because we were doing swap hedging with him on the Rhode Island transaction.

U.S. v. Carollo, 4/27/12 at 2288-89.

> Q. Directing your attention to the segment, "But you could wrap that into the other one," what do you understand Mr. Welty is referring to?
>
> …
>
> A. What Mr. Welty is suggesting or saying to Peter is that if we, UBS and I, help him on the [Massachusetts] transaction, he can take any excess profit on that and wrap it into the Rhode Island transaction.

U.S. v. Carollo, 4/27/12 at 2294.

> Q. Directing your attention to item five, based on your knowledge of the transaction and how it's bid, is this a truthful certification?
>
> A. No.
>
> Q. And for what reason is the certification false?
>
> A. I gave a last look to FGIC, to Peter Grimm.

U.S. v. Carollo, 4/27/12 at 2298.

> Q. And for what reason is the certification inaccurate?
>
> A. Because we had an agreement with GE -- UBS, we had an agreement with GE and FGIC to pay additional fees if we can help them win the transaction at an attractive level to UBS.

U.S. v. Carollo, 4/27/12 at 2300.

146. Zaino testified that the size of the fees earned by UBS for its role as a broker on that transaction, which totaled $96,000, were unusually large, as a result of UBS helping the favored provider "win the bids" associated with the **Massachusetts** and **Rhode Island** deals. (*U.S. v. Carollo*, 4/30/12 at 2317-18).

> Q. Can you elaborate to the jury, how was it unusual?
>
> A. They were very large. For a transaction that size, you know, at that level of detail, it probably was easily 10 times or something more than you might expect to otherwise earn on that transaction.
>
> Q. How was UBS able to make so much more profit on that swap transaction?
>
> …
>
> A. For facilitating or helping FGIC and Peter Grimm win the bids associated with that trade Massachusetts and Rhode Island.

U.S. v. Carollo, 4/30/12 at 2317-18.

147. At the criminal trial of Ghavami, Heinz and Welty, Zaino also elaborated on the collusive tactics UBS used to help Bank of America win the **Massachusetts Commonwealth** deal in 2001. He testified that he excluded certain aggressive providers, included certain providers for the purposes of soliciting intentionally losing bids, and gave Bank of America advance notice of the transaction, while excluding the other potential bidders, so that Bank of America could prepare their bid, as well as change their bid as needed to win. (*U.S. v.*

Ghavami, 7/31/12 at 607-09). As a result, Bank of America had agreed to make payments to UBS after the transaction, in 2002, for the purposes of setting up the transaction for Bank of America to win. Specifically, in addition to the $50,000 UBS received as payment from Bank of America for the Massachusetts deal, Bank of America also paid UBS for three deals on which UBS had done no work, in order to compensate them further for steering the Massachusetts trade to Campbell at UBS. (*U.S. v. Ghavami*, 7/31/12 at 680-84).

148. This testimony was confirmed by Campbell.

> Q. How did the subject come up?
>
> A. The subject came up, Peter Ghavami, the best I can recall, was not at the meeting right when it first started. And when Peter Ghavami walked into the room, he asked: Have you talked about the escrow yet? And at that point that's when a conversation started about the Massachusetts escrow.
>
> Q. How did the conversation begin?
>
> A. Peter Ghavami and Mike Welty and Gary Heinz and Mark Zaino proceeded to tell me about a public finance deal that PaineWebber was a senior manager on that was coming to market the next week; that it was going to be a refunding transaction; that there was going to be a large escrow bid associated with the transaction; that UBS PaineWebber was going to be the bidding agent or broker on the transaction. And they indicated to me that they would like to see Bank of America win that transaction. And had told me that they would start showing me information about that transaction in advance, significantly in advance of the bid.

U.S. v. Ghavami, 8/13/12 at 2381-82.

> Q. Did you provide UBS anything for this transaction?
>
> A. Yes, I did.
>
> Q. What?
>
> A. Over -- after this transaction, I clearly, based on the profit we made, I felt that we owed UBS. Over a period of time after this transaction, I was looking for ways to reciprocate whether that was

> providing courtesy or cover bids on their transactions or trying to involve them in transactions that Bank of America was working on. In January and February of 2002, I paid them brokerage fees on transactions that Bank of America was working on that they weren't otherwise involved in. And I also involved them in a restructuring we did with a reserve fund that we had in place with an existing client. And I also provided courtesy bids on transactions they were working on when asked.

U.S. v. Ghavami, 8/13/12 at 2396-97.

> Q. Do you have knowledge of how much profit Bank of America made as a result of the bid being set up?
>
> THE WITNESS: Yesterday I had said, when asked, in terms of the number of basis points that I would have expected to make on the transaction if it had been competitively bid, I estimated somewhere between five and six basis points as compared to the twelve basis points we made on that transaction. So, just for -- let's assume six. So it's half the number of basis points if it had been competitively bid. We made four-and-a-half million dollars. Half of that would be $2.25 million. I can estimate, based on my knowledge of the deal, that the amount of money that was attributable to the bid rigging was at least -- was in excess of $2 million.

U.S. v. Ghavami, 8/14/12 at 2490-91.

149. Specifically, according to Campbell, Bank of America paid UBS a fee in connection with: (i) a **DePauw University** deal where Bank of America did a swap with that client although UBS had no involvement; (ii) an investment agreement on a transaction called a QZAB in the State of Missouri in which UBS had no involvement; and (iii) an investment agreement that Bank of America was restructuring for **Johnson City Medical Center** even though Bank of America had no involvement. (*U.S. v. Ghavami*, 8/13/12 at 2397-98). These arrangements were agreed to in sum and substance during a breakfast meeting attended by Doug Campbell of Bank of America, Zaino, Ghavami, and other from UBS. (*U.S. v. Ghavami*, 7/31/12 at 616-19).

150. Zaino also testified to collusive practices regarding the **Catholic Health Initiatives** transaction bid out by UBS in January 2002. For instance, Zaino testified that Mike Welty at UBS had conversations with a representative of a favored provider as to who to include on and exclude from the bid list. (*U.S. v. Ghavami*, 8/6/12 at 1173-75). During a call between Mike Welty and a representative of a favored provider, the representative of a favored provider told Mike Welty that he would like to win the GIC at a level or at a bid that included the fees being paid both on the brokerage of the GIC and on the swap (i.e. hedge) for the transaction; specifically, he requested those fees, combined with the bid, to come in at "LIBOR flat or LIBOR plus or minus the zero." (*U.S. v. Ghavami*, 8/6/12 at 1184). While Zaino testified that based on his experience, the fee on swaps of this type other than in this Catholic Health Initiative transaction was generally no more than one basis point average, UBS's profit for this transaction was seven-and-a-half basis points. (*U.S. v. Ghavami*, 8/6/12 at 1223).

151. Zaino also testified about a transaction in October of 2001 involving the **Commonwealth of Puerto Rico**, which was "a very large and sizeable transaction." (*U.S. v. Carollo*, 4/30/12 at 2333). According to Zaino, UBS "could expect [a favored provider] was going to win, and we [i.e., UBS] tried to engage with them to execute swap pages related to this transaction." (*U.S. v. Carollo*, 4/30/12 at 2334). When asked how UBS was able to make such a large profit on the deal ($400,000 for the transaction and $1,135,000 for the swaps), he responded: "For helping [the favored provider] with the GIC, and specifically in this case, lowering their level closer to the cover level." (*U.S. v. Carollo*, 4/30/12 at 2338-39). Further, after the transaction was bid out, UBS decided to try and get CDR paid with respect to this transaction even though they played no role in it; CDR was ultimately paid $200,000. (*U.S. v. Carollo*, 4/30/12 at 2340, 2346). This conduct ultimately "lowered the rate or increased the

deposit amount required by Puerto Rico," unbeknownst to them. (*U.S. v. Carollo*, 4/30/12 at 2346).

152. Zaino also testified that in mid- to late-2001, UBS would enter into swap transactions with certain providers whereby UBS paid money to get GIC brokers, including defendant CDR, at the request of the provider. (*U.S. v. Carollo*, 4/30/12 at 2363, 2371). Zaino further testified that that there was a relationship between defendant CDR and a favored provider to enter into transactions where CDR was the broker and where CDR would assist or help that favored provider to win the bid and UBS would do the swap hedges and pay defendant CDR. (*U.S. v. Carollo*, 4/30/12 at 2371). The swap fees arranged to be paid to CDR in connection with these transactions had the effect of lowering the GIC paid to the issuers. (*U.S. v. Carollo*, 4/30/12 at 2371, 2373).

153. UBS also acted as a provider and thereby bid on transactions brokered by CDR. When asked what efforts, if any, CDR took to ensure that UBS won a specific transaction, Zaino stated: "CDR would set up the bid in terms of managing the bid lists, they would indicate or signal to other providers we had an interest in winning the transaction, for them to bid less aggressively, things of that nature." (*U.S. v. Carollo*, 4/30/12 at 2375). He further stated: "There was no reason or need to provide a best level. If need be, CDR would indicate to us we need to bid more aggressively to win. In that case, there is no incentive or need for us to bid our best. We could always adjust it later." (*U.S. v. Carollo*, 4/30/12 at 2375-76). Zaino also responded in the affirmative when asked if UBS ever submitted a courtesy bid on transactions that Zaino knew were set up for Steven Goldberg which they knew was the case because they were told by CDR. (*U.S. v. Carollo*, 4/30/12 at 2376).

154. CDR was an active participant in the conspiracy. In his guilty plea, Rothman of CDR admitted that, as a part of the bid rigging conspiracy, from at least as early 2001 until at least November of 2006, he and other co-conspirators designated in advance which co-conspirator providers would be the winning bidder for certain investment agreements and submitted or caused to be submitted to CDR intentionally losing bids. Kickbacks in the form of fees that were inflated or unearned were paid to CDR in exchange for assistance from Rothman and other CDR co-conspirators in controlling the bidding process and ensuring that certain co-conspirator providers won the bids they were allocated.

155. In trial testimony in the *U.S. v. Carollo* criminal trial, Rothman testified further about the nature and extent of the conspiracy, naming multiple Defendants and co-conspirators as participants.

> Q. Could you give some examples?
>
> A. Sure. CDR, on occasion, provided last looks to providers of municipal investment agreements, and they solicited courtesy bids from them as well.
>
> Q. How did you become aware that CDR participated in that conduct?
>
> A. When I first worked on the reinvestment side and I was providing analytical support, I was just kind of observing what was going on, and I was, I was just, you know, doing my job and doing what I was told. And then eventually, when I was conducting the bids myself, I was engaging in this activity myself.
>
> Q. And this activity that you've described, with which providers did you engage in it?
>
> A. There was FSA, GE Trinity Funding, UBS, and Bank of America.
>
> Q. With which particular individuals did you engage in this activity?

> A. At FSA, Steve Goldberg. At GE Capital Trinity Funding, Peter Grimm. At Bank of America, Doug Campbell. And at UBS, Mark Zaino.

U.S. v. Carollo, 4/19/12 at 905.

156. As an example, on September 8, 2004, Rothman gave a representative of a favored provider information on a bid submitted by another provider with respect to an investment contract for the **State of West Virginia Higher Education Policy Commission**. The favored provider used the information to win the contract. Similarly, on June 22, 2004, Rothman's supervisor gave Steven Goldberg information on another provider's bid for an investment contract sought by the **West Virginia School Building Authority**. Again, Goldberg's employer used that information to win the contract, then entered into a swap with UBS and paid CDR a kickback in the form of a hedge fee purportedly associated with the swap.

157. In their separate guilty pleas, Naeh and Douglas Goldberg of CDR pled guilty to similar antitrust offenses extending back to 1998. Rubin, Wolmark and Zarefsky are implicated in this chain of felonious conduct, as reflected in the nine-count superseding *CDR* indictment.

158. For example, as reported in a May 2010 Bloomberg article, in two GIC bids for the **Utah Housing Corp**. ("UHC"), CDR's Zarefsky advised a Provider Defendant that his firm could lower its offer by "a dime," or 10 basis points. "I can actually probably save you a couple bucks here," Zarefsky told the trader, according to a DOJ letter citing the tape recording of this conversation. UHC accepted contracts with a conspiring provider for 5.15 percent and 3.41 percent in 2001.

159. Douglas Goldberg provided extensive testimony on the conspiracy, as well as information on specific deals. In *U.S. v. Carollo*, Goldberg testified that CDR engaged in bid rigging from 1999 until 2006.

> Q. Can you please describe for the jury any illegal activity you were involved in at CDR in connection with the conduct of bids during the period 1999 to 2006?
>
> A. Sure. Generally we helped set up bids for specific providers, bidders to win either giving them information about other bidders' bids or giving them a last look or actually letting them reduce their bids.

U.S. v. Carollo, 4/16/12 at 339.

In his testimony, Goldberg explained the nature of the conspiracy with providers.

> Q. When you say setting up transactions for certain companies to win, what did you mean by that term, "setting up"?
>
> A. Actually, setting up a bid for them to win, so making sure a particular entity won the bid.

U.S. v. Carollo, 4/16/12 at 340.

Goldberg confirmed that this conspiracy to rig bids extended to more than one provider.

> Q. Who were some of the providers you gave last looks to?
>
> A. There was a whole host of them, but GE Capital, FSA, J.P. Morgan, Bank of America, Societe Generale, Lehman Brothers, Bear. There were others.

U.S. v. Carollo, 4/16/12 at 341.

160. Goldberg testified about multiple transactions that were set up to allow a favored provider to win. In relation to the **Florida Housing Finance Corporation** transaction, Goldberg testified about one such transaction, involving Steven Goldberg.

> Q. I'd like to direct your attention to the time that Steven Goldberg worked for GE. Do you recall the first time that you helped him win a contract?
>
> A. Yes, I do.
>
> Q. Can you describe the circumstances to the jury?

> A. Sure. It was actually his first day at GE Capital in mid-1999, and Stewart Wolmark had directed me, we were bidding on a transaction for Florida Housing, and he really wanted to give Steve his first deal, and he directed me to make sure that Steve won.
>
> …
>
> Q. What, if anything, did you do to make sure that Steven Goldberg won this transaction?
>
> A. I called him last after I had all the other bids and provided him information and actually even let him lower his bit from his initial bid.

U.S. v. Carollo, 4/16/12 at 372-73.

161. He also testified that the **Onondaga County Industrial Development Authority** transaction was fixed for a favored provider to win.

> Q. What discussions, if any, did you have with anyone at CDR before you conducted the bid?
>
> A. Again, this one was also Stewart Wolmark's transaction. He had a relationship with Solvay Paper, and he had directed me to make sure that Steve [Goldberg] won.
>
> Q. Did you and Mr. Wolmark discuss any other matters with regard to how you were to make sure that Mr. Goldberg won?
>
> A. I was to make sure he got a last look and I gave him enough information to win the transaction.

U.S. v. Carollo, 4/16/12 at 381.

This testimony was confirmed by Wolmark himself, who testified that CDR provided a favored provider a “last look” so that they could secure the bid.

> A. Because it's a very attractive piece of business, there's no risks to draws, so it's something that everybody always likes to try to win those deals.
>
> Q. You said, "If I give you last look you'll have the right number," what did you mean by that?

A. That if I give you last look, that you'll guarantee that you're going to take the deal down.

U.S. v. Carollo, 4/23/12 at 1359-60.

162. In relation to the **Port Authority of Allegheny County** transaction, Goldberg testified that CDR set up the transaction for a favored provider to win so CDR could secure a fee on the interest rate swap.

Q. How much did CDR offer to charge to bid out these two transactions?

A. $5,000.

Q. How did this fee compare to the fees normally charged by CDR for such transactions?

A. It was much smaller.

Q. Mr. Goldberg, what, if any, discussions did you participate in at CDR concerning the low fee it was charging to bid these two transactions?

A. I was involved in a number of discussions actually with Stewart Wolmark and David Rubin when we were deciding what to bid to conduct the bid. And it was decided that we knew if we went in low enough, we would win the business and we could get an additional fee from Steve Goldberg if he won.

Q. Did Mr. Wolmark say anything else about Steve Goldberg winning the contract?

A. He had mentioned to me that he wanted me to write a letter to Steve.

Q. What, if anything, did Mr. Wolmark say as to why Steve Goldberg would pay CDR?

A. He said he had talked with Steve Goldberg about the fact that if CDR acted as a swap broker for them, he could pay us on those transactions, on deals that we set up for him to win.

Q. At the time of this bid, did you have any reason to believe that Steven Goldberg had arranged any type of payments to CDR in the past?

A. Not to my knowledge.

Q. What, if anything, did Mr. Wolmark tell you about why Steven Goldberg was going to pay CDR a swap pay in this instance?

A. It would be for the fact that we set this transaction up for him to win the Allegheny County transaction.

U.S. v. Carollo, 4/16/12 at 401-03.

163. Similarly, on July 2, 2002, Douglas Goldberg gave Steven Goldberg information about another provider's bid on an investment contract with the T**ampa Port Authority (Hillsborough County Port District**). The former told the latter to lower the interest rate he was prepared to bid. Goldberg's employer did so and won the contract.

164. Goldberg also testified about various transactions that were set up to allow UBS to win. With respect to the **Georgia Baptist Healthcare System** deal, Goldberg testified that he intentionally solicited losing bids to set up the transaction for UBS.

Q. Did you do anything to ensure that a certain provider won this deal?

A. Yes.

Q. What was that?

A. We set it up, Matt Rothman and I set this one up for UBS to win.

Q. And how did you do that?

A. By getting intentionally losing bids other than UBS's.

Q. Do you recall who the providers were that bid on this contract?

A. UBS, Bear Stearns, I think J.P. Morgan and FSA is my best recollection right now.

Q. And who -- which providers did you solicit losing bids from?

A. Actually all three of the others, so Bear Stearns, J.P. Morgan, and FSA.

U.S. v. Ghavami, 8/16/12 at 2973, 2975.

165. Goldberg's testimony also revealed that UBS was solicited for and ultimately provided intentionally losing bids on numerous occasions.

Q. Do you recall some of the deals where you asked Gary Heinz and Mark Zaino to provide losing bids?

A. Yes.

Q. What were those?

A. There was **Columbia College, Gladstone Institute, Allegheny Airport.**

U.S. v. Ghavami, 8/16/12 at 2933.

166. In addition to Douglas Goldberg's testimony, Dani Naeh's testimony further illustrates the extent and nature of the conspiracy. During the *U.S. v. Carollo* criminal trial, Naeh testified that he solicited courtesy bids from many Provider Defendants and co-conspirators on behalf of CDR in order to steer transactions to preselected providers.

Q. And focusing on the time period from 1999 until you left CDR in 2004, did you or others from CDR solicit courtesy bids from providers?

A. Yes.

Q. And from which providers?

A. From any providers, including certainly Steve, you know, from FGIC and from FSA and from Bank of America --
A. -- UBS, Bank of America, J.P. Morgan, many of the providers that we worked with.

Q. And for what reasons did you solicit courtesy bids from these providers?

A. The most common reason to, that I would solicit a courtesy bid is if I was working on a transaction where I had preselected a

> provider to win the deal, I would then go to people that I was friendly with in the industry and say, you know, this deal is earmarked for someone to win, can you put in, can you put in a bid, is basically what I would tell people.

U.S. v. Carollo, 4/17/12 at 661.

167. On December 30, 2011, DOJ announced that Rubin and CDR had pled guilty to various acts of bid rigging. The DOJ's press announcement of these pleas stated as follows:

> Rubin and CDR each pleaded guilty to participating in separate bid-rigging and fraud conspiracies with various financial institutions and insurance companies and their representatives. These institutions and companies, or "providers," offered a type of contract, known as an investment agreement, to state, county and local governments and agencies throughout the United States. The public entities were seeking to invest money from a variety of sources, primarily the proceeds of municipal bonds that they had issued to raise money for, among other things, public projects. Rubin and CDR also pleaded guilty to one count of wire fraud in connection with those schemes.
>
> "Mr. Rubin and his company engaged in fraudulent and anticompetitive conduct that harmed municipalities and other public entities," said Sharis A. Pozen, Acting Assistant Attorney General in charge of the Justice Department's Antitrust Division. "Today's guilty pleas are an important development in our continued efforts to hold accountable those who violate the antitrust laws and subvert the competitive process in our financial markets."
>
> According to court documents, CDR was hired by public entities that issue municipal bonds to act as their broker and conduct what was supposed to be a competitive bidding process for contracts for the investment of municipal bond proceeds. Competitive bidding for those contracts is the subject of regulations issued by the U.S. Department of the Treasury and is related to the tax-exempt status of the bonds.
>
> During his plea hearing, Rubin admitted that, from 1998 until 2006, he and other co-conspirators supplied information to providers to help them win bids, solicited intentionally losing bids, and signed certifications that contained false statements regarding whether the bidding process for certain investment agreements complied with relevant Treasury Regulations. Additionally, Rubin admitted that he and other co-conspirators solicited fees from providers, which were in fact payments to CDR for rigging or

> manipulating bids for certain investment agreements so that a particular provider would win that agreement at an artificially determined price.
>
> "Mr. Rubin and his firm were trusted with public money and confidence to assist municipalities with issuing bonds," said FBI Assistant Director in Charge Janice K. Fedarcyk. "Contrary to his agreement and the law, Mr. Rubin shirked his responsibilities while defrauding taxpayers. Thankfully, this bid-rigging scheme, where Mr. Rubin decided the winners and losers, is over."

168. Campbell of Bank of America pled guilty to illegal dealings with CDR, among others. He took part in the alleged conspiracy from 1998 through September of 2005, according to the DOJ. He and his co-conspirators agreed in advance on who would be the winning bidder for investment agreements and other municipal finance contracts brokered by CDR. Campbell also allegedly agreed to submit losing bids to CDR for agreements or contracts that ended up being steered to others, to create the illusion of competitive bidding. Bank of America paid CDR kickbacks that took the form of inflated or unearned fees in exchange for help controlling the bidding and making sure certain providers won the bids they were allocated. CDR also got kickbacks for giving Campbell information about prices or conditions in competitors' bids. These types of conduct are exemplified by the April 15, 2002 bidding for a Municipal Derivatives agreement where CDR caused another provider to submit an intentionally losing bid, funneled that information to Campbell, who submitted a depressed bid and won the contract.

169. With reference to a transaction relating to the **Rhode Island Tobacco Settlement Financing Corporation**, Campbell specifically testified that Bank of America avoided bidding competitively on business that they normally would have tried to secure.

> Q. To your knowledge was this the type of trade Bank of America wanted to win?

> A. Yes. This is the type of transaction that Bank of America at this point in time was very good at bidding on based on the structure of the transaction. In other words, the way it was being bid is an upfront payment transaction, the securities that were allowed to be delivered pursuant to the investment agreement and the size of the transaction. This is a transaction that Bank of America at that time was one of the very most competitive providers of in the marketplace.
>
> …
>
> Q. Did Bank of America bid on this transaction?
>
> A. No, we did not.
>
> Q. Why not?
>
> …
>
> THE WITNESS: Bank of America was asked by UBS PaineWebber not to bid on this transaction; instead, they would like us to enter into a transaction with them and they bid on the transaction.

U.S. v. Ghavami, 8/13/13 at 2439-40.

170. Other Defendants were admittedly involved in the conspiracy. Wright of JPMorgan also testified that during the period of November 1998 through 2001, the municipal swap desk at JPMorgan had a relationship with CDR whereby CDR would provide JPMorgan information about where other bidders were coming in on a particular deal "so that it could precisely target its bid to win without sacrificing very much profit." In some cases, CDR would allow JPMorgan, if JPMorgan had a winning bid, "to in effect add more profit to the first bid and still be allowed to win the transaction, sort of backup the number until it would still be the winner." (*U.S. v. Ghavami*, 8/9/12 at 1914).

171. Similarly, Rubin of CDR testified that employees at CDR, including "Dani Naeh, Doug Goldberg, or anyone else that would be engaged in conversations on [the] desk would speak to the specific people at JPMorgan: Peter Ghavami, Ajay Nagpal, Kisti Shah,

Shlomi Raz. And on specific transactions would give them the information necessary for them to be the winning bidder." (*U.S. v. Ghavami*, 8/20/12 at 3224). He further testified that from 1998 through 1999, CDR helped JPMorgan win approximately ten deals.

172. Kanefsky of Kane Capital also pled guilty to collusive bid rigging conduct. Kane Capital was supposed to conduct competitive bidding processes for Municipal Derivative providers. Instead, Kanefsky gave such providers information about the prices, price levels or conditions in competitors' bids. He also solicited and made intentionally losing bids for GICs and other municipal finance contracts. For example, on or about April 7, 2005, Steven Goldberg asked Kanefsky if the rate he was prepared to bid in connection with a state housing authority Municipal Derivatives transaction on behalf of another Provider Defendant was too high. Kanesky stated that if the bid was too high, he would "shave a little." Later the same day, Kanefsky said he would submit a bid that was lower than the one he had previously stated. Goldberg's employer won the auction thanks to Kane Capital's collusive courtesy bid.

173. Similarly, on or about February 21, 2002, Kanefsky told a representative of a favored provider that it could lower the rates it had bid for an investment contract with a state housing finance agency. The favored provider was ultimately awarded the contract.

174. Scott-Jones of CFP also committed bid rigging in violation of the antitrust laws. He gave co-conspirators information about prices or conditions in competitors bids, prosecutors claimed, adding that he solicited and received intentionally losing bids for investment agreements and municipal finance contracts.

175. Hertz of JPMorgan also pled guilty to collusion in violation of the antitrust laws. He and his co-conspirators engaged in a bid rigging conspiracy from at least as early as October of 2001 until at least November of 2006. As a part of the bid rigging conspiracy, Hertz

and his co-conspirators designated in advance which co-conspirator provider, either his employer or another financial institution, would be the winning bidder for certain investment agreements or other municipal finance contracts. The co-conspirators also agreed to submit intentionally losing bids for investment agreements or other municipal finance contracts that were steered to other financial institutions, giving the false appearance that these deals had been bid competitively.

176. Similarly, from as early as 1998 until at least November of 2006, Sound Capital gave Hertz information about the prices, price levels or conditions in competitors' bids. On October 3, 2001, for example, Sound Capital signaled Hertz to raise his quoted rate on a transaction with a state university. Hertz did so and JPMorgan won the transaction at the higher stated rate. Likewise, on September 18, 2002, in connection with a Municipal Derivative transaction involving a certain town, Hertz quoted a price to a representative of Sound Capital and asked "How's that looking?" A co-owner of Sound Capital who had communicated with other bidders called Hertz back and told him to change his bid in order to make it more advantageous to JPMorgan, which was awarded the investment agreement. As a third example, on October 26, 2004, Sound Capital gave Hertz information on a competing provider's bid for a certain town's investment agreement; this information allowed Hertz to change his bid and cause JPMorgan to be awarded the contract.

177. During the criminal trial of Ghavami, Heinz, and Welty, Wright of JPMorgan testified about collusive practices in general, in addition to testifying about specific deals.

> Q. During the time that you worked on the muni swap desk and bid on investment agreements at J.P. Morgan, were your representations always truthful and accurate?

A. No, they weren't.

Q. Can you explain why not?

A. Yes. There were some where I had, in fact, consulted with another bidder about what my bid would be and had put in a number that was what it was because of an informal agreement between me and somebody else. And I also from time to time would bid numbers, you know, hoping not to win, knowing that I wasn't going to win, which I was doing as a courtesy in effect.

U.S. v. Ghavami, 8/9/12 at 1909.

Q. To your knowledge during this period of time of November 1998 through early 2001 did J.P. Morgan have a relationship with any particular brokers that gave favors to J.P. Morgan [muni swap desk employees]?

…

THE WITNESS: There were several. I don't remember probably most of them. But a few spring to mind. One of them is the firm called CDR. Another firm was called Sound Capital Management. A third firm was called IMAGE.

Q. When you used the word "favors," what did you mean?

A. Mostly -- it could be a number of things. But when I was using it, I was thinking of things like preferential treatment in a particular bid, something that would help J.P. Morgan either win a transaction it might not otherwise win or make more money than it might otherwise have made.

Q. How?

A. Usually by providing J.P. Morgan information about where other bidders were coming in, so that it could precisely target its bid to win without sacrificing very much profit. Or in some cases allowing J.P. Morgan, if you had a winning bid, to in effect add more profit to the first bid and still be allowed to win the transaction, sort of backup the number until it would still be the winner.

U.S. v. Ghavami, 8/9/12 at 1913-14.

178. One such transaction involved the **South Central Connecticut Regional Water Authority** deal, on which JPMorgan served as the dealer. In a conversation with Heinz of UBS, Wright explained to Heinz "that he could really help [Wright] by putting in a pricing indication that wasn't too competitive. According to Wright, this was a "check away transaction," pursuant to which a party who is trying to obtain a swap transaction reaches out to other potential providers to get indications of how those other potential providers might price the deal. (*U.S. v. Ghavami*, 8/9/12 at 1946).

179. Mr. Wright also submitted a sham bid on behalf of JPMorgan with respect to the **City of Detroit** sewer disposal system transaction in or around September 26, 2001, on which Winters served as a broker. (*U.S. v. Ghavami*, 8/9/12 at 1959). This was described in Wright's trial testimony.

180. Wright testified:

> Q. I want to direct you attention to lines 16 through 21. Mr. Heinz indicates, "You'll be seeing it probably through Winters." Again, who is Winters?
>
> A. Winters is Winters & Co., the broker.
>
> Q. What do you understand Mr. Heinz to be telling you there?
>
> A. I understand him to be telling me that the bid will come to me from Winters & Co. and furthermore Winters & Co. is endeavoring to fill out the bid group to include three disinterested bidders and UBS.
>
> Q. Directing your attention to lines 23 and 24 where Mr. Heinz says, "I, I told him you'd probably put a number on it." What do you understand that to mean?
>
> A. I understand that to mean that I am supposed to put in an intentionally losing bid on this transaction.

U.S. v. Ghavami, 8/9/12 at 1962. Indeed, Winters informed Wright what number to bid so that JPMorgan would "have a comfortably losing bid." (*U.S. v. Ghavami*, 8/9/12 at 1964).

181. With respect to the **Chicago Water** transaction, Wright testified:

> Q. Directing your attention to page 7/lines 24 through 25, Mr. Heinz says, "I can help you out with levels on that, if need be." What do you understand that to mean?
>
> A. I understand him to be telling me that he can tell me what number J.P. Morgan should bid on that escrow if I need that kind of help. And I further understand it to be the case that this will be a losing bid, an intentionally losing bid that J.P. Morgan will be submitting.
>
> Q. Directing your attention now to page 9/line 15 through 17 Mr. Heinz says he can make you and Sam comfortable if necessary. What did you understand that to mean?
>
> A. I understood him to be telling me that he could simply tell myself and my colleague Sam Gruer what number to bid; that it would be an intentionally losing bid, but still a number that would look realistic and would draw no scrutiny, making us comfortable.

U.S. v. Ghavami, 8/10/12 at 2018-19.

182. With respect to the **Fresno** and **Anchorage** transactions, Wright testified:

> Q. And the body of the e-mail indicates, "I spoke with Johan and he was clear that this escrow is not our biz." What did you understand Peter Orr to mean by that?
>
> A. I understood him to be telling us that he discussed this escrow for the County of Fresno with Johan, the bidding agent, and had learned that J.P. Morgan was supposed to bid but was supposed to submit an intentionally losing bid in this transaction

U.S. v. Ghavami, 8/10/12 at 2045.

> Q. Directing your attention to page 10, lines 1 and 2. Mr. Heinz says, "I need you guys to put in a number, but I can help you with that number." What did you understand that to mean?
>
> A. I understand him to be telling me that he really needs us to participate in this bid but that it's not a bid that we're going to be asked to win and that he can just tell me what number to bid.

U.S. v. Ghavami, 8/10/12 at 2059.

> Q. When you put in your bid number on the Anchorage transaction, was that a competitive bid number on the Series B transaction?
>
> A. It was an intentionally losing bid number.

U.S. v. Ghavami, 8/13/12 at 2321.

183. Wright also testified about the **Greater Orlando Aviation Authority** deal, called a knock-in swaption, on which Morgan Stanley served as broker. Wright testified that JPMorgan received information on the pricing of other bidders which allowed them to price to win and also maximize profit.

184. Wright testified:

> Q. You just indicated that J.P. Morgan had a very great desire to win this transaction, correct?
>
> A. That's correct.
>
> Q. How would it help you -- how would it help J.P. Morgan to know where the other bidders were coming in?
>
> A. Well, the most important thing would be, if you knew where every other bid was, you would be guaranteed to win, especially in the position that we were in, where we really, really wanted to win. We would just do slightly better than the next best bid, and we would be completely sure of winning. And I guess you have to understand a little bit what it's like to be a bidder and to really want to win, but know that you might lose. That uncertainty weighs heavily on you. It weighed heavily on us at the time. And so we were so interested in winning that knowing where other people's bids were going to be was valuable information. But in addition to making it a certainty virtually that we would win, as important as that was, we also wanted to maximize the amount of money that we would make, and so when you are not sure where all the bids are going to be, maybe you bid a really small number that's kind of painful because you are really not making much, but that's what you've got to do to be certain, well, if you know where everybody else is, you can just widen it out until you are just ahead of the next best guy and make more money.

U.S. v. Ghavami, 8/9/12 at 1952-53.

185. Wright testified about collusive tactics involving the **Robert Wood Johnson Healthcare** transaction.

> Q. Did Mr. Heinz explain to you how he was going to help you win this transaction for the Robert Wood Johnson interest rate cap?
>
> …
>
> THE WITNESS: Yes, he did.
>
> Q. How did he explain to you that that was going to happen?
>
> A. The mechanics were going to be that I would put in a very low number, as he called it a tight level, put in a very low number, perhaps the lowest number you could really live with, meaning if you actually, you know, got the award at that low number you wouldn't get fired or anything. That was the first step. The second step was Mr. Heinz would call me, not to award the transaction but to confirm where my number was and tell me, you know -- so he said I might come back to you and say are you still good at, let's say 168,000. And at which point I would say, you know, yeah, that would be great. My understanding was that that now higher number would be a number where I could still win if I adopted it as my own number and make more money.

U.S. v. Ghavami, 8/13/12 at 2327-28.

186. Ghavami, Heinz and Welty of UBS have also been accused of bid rigging by the DOJ and were convicted following trial of various illegal actions in furtherance of the conspiracy alleged herein. For example, in one deal for an unidentified state financing agency in June 2002, Welty agreed to buy the securities underlying the investment agreement from a rival in exchange for the competitor's not bidding on the auction, which UBS ultimately won.

187. The three former UBS employees also participated in a bid rigging scheme orchestrated by CDR. Prosecutors said Ghavami, Heinz and Welty paid kickbacks to CDR in exchange for inside information about competing bids and used that information to win deals.

For example, on June 5, 2002, after winning an investment agreement for a school district, Ghavami arranged a $65,000 kickback to CDR that was disguised as a fee for brokering an interest-rate swap, according to the indictment. During the criminal trial of Ghavami, Heinz and Welty, Zaino testified that he committed the crimes to which he pleaded guilty along with his UBS colleagues. For instance, Zaino testified that while at UBS, he personally observed Heinz and Welty helping certain bidders by giving them last looks or allowing them to adjust their bids in deals where UBS was serving as the broker.

188. The 12-count indictment against Carollo, Goldberg and Grimm also alleged significant misconduct involving four other Broker and Provider Defendants, including entities identifiable from other informations or from public sources as IMAGE, Kane Capital, CFP and UBS. The indictments provide extensive details of the workings of the alleged conspiracy.

189. Examples of the conduct alleged in this indictment (in addition to those involving Kanefsky mentioned above) include the following:

a. In connection with bidding on October 23, 2003 for investment agreements for the **West Virginia Water Development Authority**, Wolmark of CDR and Steven Goldberg discussed a scheme where the latter would pay kickbacks to the former tied in to swaps on the agreements with UBS or RBoC. After bids were due, Zarefsky of CDR gave Steven Goldberg a last look that enabled Goldberg's employer to win the swap. Goldberg's employer and RBoC paid kickbacks to CDR on the resulting swaps.

b. In connection with bidding on September 26, 2002 involving than inverstment agreement for the **Board of Port Commissioners of the City of Oakland,** Steven Goldberg and Wolmark agreed on kickbacks to be paid by Goldberg's employer to CDR on swaps with UBS. As a result of this scheme, Wolmark gave Steven Goldberg information on three other providers' bids that enabled Goldberg's employer to win the contract. Goldberg's employer then paid CDR a $25,000 kickback disguised as a hedge fee from a swap with UBS related to the contract.

c. In connection with bidding on May 19, 2004 for investment contracts with the **Maine State Housing Authority**, Rubin of CDR suggested to the representative of a favored provider that he lower his quoted rate to obtain a winning bid. The favored provider won the bid.

d. In connection with bidding on March 21, 2002 for state university investment contracts, IMAGE asked a conspiring provider to "back off" his bid so a favored provider could win the deal. In exchange for this forbearance, the representative of IMAGE promised to "work something with you on something else coming up" and "find you another one soon." The representative of the conspiring provider agreed and IMAGE provided him with specific rates to bid in order to give the favored provider "breathing room" that enabled it to win the contracts. The representative of the conspiring provider then called Steven Goldberg, saying that the latter "owed him lunch" because IMAGE "asked me to back off my number...so that you can win both" contracts.

e. In connection with January 10, 2002 bidding on a **Hospital & Higher Education Facilities Authority of Philadelphia** investment contract, IMAGE told a favored provider that he should lower his bid to win the contract, on which the favored provider bid successfully.

f. In connection with bidding on November 1, 2000 for **California Health Facilities Financing Authority** investment contracts, IMAGE told Steven Goldberg about other providers' bids to enable a favored provider to win the bid. Scott-Jones of CFP, acting as an agent for CDC, told Steven Goldberg to lower his bids on two of the three contracts. This collusion allowed the favored provider to win the contracts.

g. In connection with the bidding on November 20, 2001 for investment contracts for a state housing authority investment contract, the representative of a conspiring provider told Steven Goldberg that he had heard from Kane Capital that Steven Goldberg wanted to "call in" a favor and asked if the conspiring provider should "back off'" its bid. Steven Goldberg said yes and told the representative of the conspiring provider what his employer should bid. The representative of the conspiring provider promised to "take it easy today" and provided Steven Goldberg with what his employer would bid. Goldberg's employer won the contract accordingly.

h. In connection with the bidding on December 5, 2002 for an investment contract for a state educational assistance foundation, PaineWebber (now

part of UBS) told a favored provider that it could lower its quote and still win the contract, which it did.

i. In connection with the bidding on January 20, 2004 for an investment contract for a state educational facilities authority, IMAGE told Steven Goldberg how his employer could lower its quote and still win the contract, which it did.

j. In connection with the bidding on November 2, 2004 for investment contracts for a state water pollution abatement trust, Scott-Jones, acting on behalf of CDC, told Steven Goldberg how his employer could lower its quote on one of the contract bids and still win, which it did.

190. FBI agent Sylvia Hilgeman is a member of the agency's bank fraud squad, and was assigned to an investigation concerning the municipal bond industry in approximately March of 2011 and testified during the criminal trial. During the course of her investigation, Hilgeman reviewed audio files, transcripts, and other documents, and generally became familiar with broker-defendant IMAGE. Hilgeman testified to collusive practices involving defendant IMAGE as bidding agent in respect to certain municipal bond deals, including: (i) $500 Million **Puerto Rico Highway and Transportation Authority Revenue Bonds** (Series B); (ii) $447,826,581 **Kentucky Economic Development Finance Authority Health System Revenue Bonds,** Series 2000; (iii) **Idaho Housing and Finance Association Single Family Mortgage Bonds,** 2002 Series A for $45 million; (iv) **The University of Nebraska Facilities Corp**. Series 2002 Bonds, the University of Nebraska Medical Center Research Center Project for $56,695,000; (v) **Kentucky Interlocal School Transportation Association** $166,630,000 Tax and Revenue Anticipation Notes, Series 2002; and (vi) **New Jersey Educational Facilities**

Authority, Revenue Bonds, the **William Patterson University,** New Jersey Issue Series 2004 for $30,035,000. For each deal, the documents that Hilegman was shown during the trial reflect the same deal terms as discussed on various telephone calls among the employees of IMAGE and the winning bidders for each deal.

191. The evidence from pleadings and trial testimony illustrates the nature of the illegal conspiracy, the many Defendants involved in various aspects of the bid rigging process, and the types of agreements entered into between Defendants at the expense of consumers.

COLLUSIVE PRACTICES REGARDING NEGOTIATED TRANSACTIONS

192. The illegal conspiracy extended to negotiated, as well as competitively-bid, transactions. On negotiated deals, Bank of America would ask brokers for a "market pricing letter," a certification that the pricing on a negotiated deal reflected a fair market price. Brokers would submit such letter even where they knew that market prices were premised on collusive activities.

193. In one negotiated deal involving the renovation of the **Olympic Club in San Francisco** entered into in April of 2002, IMAGE sent a market pricing letter to Murphy for use with the issuer. In a March 11, 2002 e-mail to Pinard, Murphy mentioned that he would be requesting this letter and said that if IMAGE didn't get the brokerage business on another deal involving **Beacon Tradeport Community Development District**, "we can find some $ elsewhere."

194. Similarly, in August of 2004, a trader on Bank of America's Municipal Derivatives trading desk and a Wachovia employee discussed the pricing of a swap transaction for the **NC State Student Aid Association** that was not bid out and that the two Providers Defendants were splitting.

195. Likewise, in July of 2004, in a negotiated deal involving a trigger swap for a wastewater facility for the **City of Chicago**, Bank of America and JPMorgan were collusively given the opportunity to see the pricing of Lehman and adjust their own pricing accordingly, so that Lehman got 60% of the deal and JPMorgan and Bank of America each got 20%. The Broker Co-conspirator on the deal, Mesirow, suggested that this arrangement could be subject to scrutiny.

196. Another instance involving negotiated transactions is reflected in the 2007 lawsuit by **Biola University** against Bank of America, where it was accused of sharing kickbacks with BNP Paribas on bond issuances and related swaps consummated in January-February of 2002 and November of 2004.

COLLUSIVE COMMUNICATIONS AMONG PROVIDERS

197. In addition to the discussions with Piper Jaffray and CDC described above, Bank of America's employees had repeated communications with employees of other Provider Defendants and Provider co-conspirators in furtherance of the alleged conspiracy. Some illustrative examples disclosed by Bank of America follow.

198. For example, there is an audiotape from 2002 in which a UBS trader told a Bank of America trader that it had an "axe" for a swap with respect to which IMAGE was handling the bidding on the following day. Another example of collusive communications between UBS and Bank of America are the conversations between Campbell and Zaino of UBS with respect to the Commonwealth of Massachusetts deal mentioned earlier.

199. The CW met Gruer of JPMorgan at a holiday party hosted by IMAGE at Sparks Steak House in New York City and told Gruer that he was glad that Bank of America and JPMorgan weren't "kicking each other's teeth out" on escrow CD bidding and that it had worked out well for both companies. Gruer acknowledged the cooperation between the two firms. The

CW did not hesitate to call Gruer on particular deals in order to ask how aggressively JPMorgan would be bidding.

200. There is an audiotape in which Campbell told McConnell of Wachovia that Campbell had advised Goldberg of CDR that it was acceptable to Bank of America that another provider won a deal brokered by CDR. The deal in question was won by the UBS-owned PaineWebber.

201. In another audiotape, Campbell and McConnell of Wachovia discussed including Bank of America in a deal in order to justify paying Bank of America $300,000 to compensate it for allowing Wachovia to do a deal with Towne at Piper Jaffray, with whom Campbell regularly worked.

202. There are also audiotapes where employees from Bank of America and other Provider Defendants (including representatives of Bank of America, JPMorgan and UBS) discussed splitting the economics of, and/or pricing for, swap transactions, with the goal of coordinating bids for them.

OTHER FACTS INDICATIVE OF A CONSPIRACY

203. The alleged conspiracy has also been facilitated through intercompetitor contacts at trade associations. One such association is the International Swaps & Derivatives Association ("ISDA"), which describes itself at its website as "represent[ing] participants in the privately negotiated derivatives industry, [and] is the largest global financial trade association." The ISDA's members include the following: Bank of America, JPMorgan, Bear Stearns, Société Générale, UBS, and Wachovia. Another is the American Bankers Association, which counts among its members the Bank of America, Morgan Keegan, JPMorgan, UBS, and Wachovia. A third is the Securities Industry and Financial Markets Association ("SIFMA"), formed in 2006 by the merger of the Securities Industry Association and the Bond Market Association. As stated at

SIFMA's website, "[w]hile its name has changed, its mission has been consistent: to represent the bond markets; advocate on their behalf; provide opportunities for professional development and industry education and serve as conduit through which the industry communicates with regulators, legislators, the media and the public." The members of SIFMA include the following Defendants and co-conspirators or affiliates thereof: AIG, Bank of America, Bear Stearns, First Southwest, GE/Trinity entities, JPMorgan, Natixis, Piper Jaffray, Morgan Keegan, and Wachovia. The Chairman of SIFMA is Blythe Masters of JPMorgan, and its President and CEO is T. Timothy Ryan, Jr., formerly of JPMorgan.

204. Conferences, such as those presented by the Information Management Network ("IMN") also provide venues to collude. For example, over the last six years, IMN has hosted the New England Public Finance Conference. As its website explains, "IMN will bring together public finance officials, issuers, underwriters and public finance professionals from Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont for two days of informative dialogue and education on how to improve public finance within their respective states. MacFaddin of JPMorgan chaired an IMN Municipal Derivatives conference in May of 2006 in which many of the Provider Defendants, Provider co-conspirators, Broker Defendants and Broker co-conspirators were represented. IMN also hosts the Issuers & Investors Summit, which was held in December of 2008 at La Quinta, California; "[d]ebt issuers are faced with a complex number of choices and opportunities involving the financial structures that support the many projects necessary to meet the needs of their communities and local area constituents. Investors will gain an inside track on new and existing financing projects, with ample networking opportunities to meet and form relationships with a range of entities from both the not-for-profit and government sectors."

205. As other examples, Pinard of Bank of America did a presentation at the Bond Buyer Derivatives/Short Term Finance Institute Conference in June of 2006 at which Julie Hughes (a Vice-President of Sound Capital), Evan Zarefsky (a Vice-President of CDR), and Michael Marz (Vice-Chairman of First Southwest) were present. Pinard also participated in the May 2006 meeting of the Pennsylvania Association of Bond Lawyers, giving a presentation on the economics of derivatives at which Michael Lena of JPMorgan was a co-presenter.

206. The Broker Defendants and Broker co-conspirators touted to issuers their abilities to facilitate deals for the Provider Defendants and Provider co-conspirators and touted the network of relationships they created among Providers. For example, on its website, CDR claims "CDR Financial develops products and strategic alliances across a wide spectrum of financial institutions, including asset managers, banks, broker dealers and insurance companies."

207. The interconnected nature of the Municipal Derivatives industry facilitated and reinforced the conspiratorial conduct alleged herein, leading to the massive, multi-agency government investigation. As the *Bond Buyer* reported on November 21, 2006:

> "The industry tends to be quite intertwined and interconnected," said Willis Ritter, a partner at Ungaretti & Harris here. "Virtually all the major houses are involved in selling [GICs], so if you think you've found something about one, you suspect you're going to find it about all of them."

INTERNAL REVENUE SERVICE INVESTIGATION

208. The IRS was the first agency to launch an investigation of collusive practices in the Municipal Derivatives industry. Its inquiry initially focused on dozens of municipal bond deals where the providers failed to pay $100 million in taxes by engaging in abusive arbitrage devices. The IRS was concerned that some GIC providers were overcharging issuers for GICs and other investment products. This would artificially lower, or "burn,"

investment yields below the bond yield. The spread between the investment and bond yields was then passed to the provider, rather than rebated to the IRS as required by the federal tax laws.

209. Anderson of the IRS has stated that "[i]t looks like bid rigging is wider and more pervasive than we thought." Mark Scott, director of the IRS's tax-exempt bond office, publicly stated that "[w]hen a bid is 100 to 150 basis points below the market and there is no justification for that being so low, one of the assumptions you can draw is that there are courtesy bids being provided." These types of bids are "provided solely as a courtesy so that another banking organization can win on a bid that is below fair market value," according to Scott. "We have seen transactions where the winning bid is the only bid high enough to make the deal work." As Scott went on to note, "[t]hat's basically what we've been doing . . . is following those, what I like to refer to as 'tentacles of abuse.'" These are the types of courtesy bids described above in connection with the Bank of America's collusive activities. By January 2005, the IRS was already involved in as many as 20 bid rigging investigations in the municipal derivatives market. However, no information that was then publicly available informed Plaintiffs of the full scope of the conspiracy alleged here.

210. As the agency's investigation progressed in 2006, Anderson stated that the regulators "think we have evidence of bid rigging." The IRS probe showed that investment contracts were sold at below market rates, according to Anderson. That means lower returns for municipalities and less tax revenue for the IRS. He added, "[p]eople were winning GICs at below fair market values and there were obviously deliberate losing bids by the losing bidders, thereby allowing the winner to win a sweetheart deal."

211. At the same time, Patrick Born, chief financial officer of Minneapolis and the head of the debt committee of the Chicago-based Government Finance Officers Association,

noted: "[t]he way that these folks have operated, largely by telephone and largely out of public view, are not as transparent as they might be . . . . And it's certainly possible that when you don't have transparency you can have abuses."

212. The IRS investigation led an investment banking firm to uncover transcripts of telephone conversations involving an employee that indicated the employee and other market participants were involved in bid rigging on GICs in the municipal market.

213. On February 7, 2007, Bank of America announced that it would pay $14.7 million to the IRS for its role in providing GICs in blind pool deals to some state and local government entities.

214. In addition to the IRS regulations concerning arbitrage, as well as the federal antitrust laws, the IRS regulations governing GIC bidding also have been broken. Besides discovering illegal arbitrage, the IRS has stated that it has come across instances of price-fixing, bid rigging and kickbacks.

ANTITRUST DIVISION INVESTIGATION

215. In light of these revelations, the Antitrust Division of the DOJ commenced its own investigation of the bid rigging in the Municipal Derivatives markets. For the better part of two years, the Antitrust Division has been examining whether there was collusion among financial institutions in the bidding process for GICs and other Municipal Derivatives. The DOJ is conducting an "investigation of anticompetitive practices in the municipal bond industry," said spokeswoman Kathleen Bloomquist. The investigation is the largest criminal investigation of public finance ever conducted by the DOJ.

216. On November 15, 2006, the Federal Bureau of Investigation ("FBI") raided the offices of and seized documents from three Broker Defendants: CDR, IMAGE, and Sound Capital.

217. Following the FBI raids, the Broker Defendants, Broker co-conspirators, Provider Defendants and Provider co-conspirators were served with subpoenas. The subpoenas sought detailed information from the companies dating back to 1992. The subpoenas asked for documents, e-mails, tapes or notes of phone conversations, and other information regarding "contracts involving the investment or reinvestment of the proceeds of tax-exempt bond issues and qualified zone academy bonds [as well as] related transactions involving the management or transferral of the interest rate risk associated with those bonds, including but not limited to guaranteed investment contracts; forward supply, purchase or delivery agreements; repurchase agreements; swaps; options; and swaptions." The subpoenas also requested corporate organizational charts, telephone directories, and lists of all individuals involved with GICs and derivatives, in addition to all documents associated with "relevant municipal contracts awarded or intended to be awarded pursuant to competitive bidding"—including invitations to bid; solicitations; notices, or requests for quotations or proposals issued to any provider; actual or proposed responses; and amounts and prices bid.

218. On December 11, 2006, prosecutors based out of the Antitrust Division's New York field office that were tasked with investigating the alleged bid rigging brought their case to a federal grand jury sitting in the Southern District of New York.

219. According to news reports and company filings, more than 30 banks, insurance companies, and brokers, have received governmental subpoenas, including, *inter alia*, the following entities: GE Funding; GE Trinity; CDR; Security Capital; XL Capital; IMAGE; Sound Capital; First Southwest; IXIS (and through it, CDC); Kinsell; XL Capital Assurance, Inc.; Lehman; Société Générale; Baum; Winters; JPMorgan; American International Group Inc.;

Bear Stearns; Feld Winters; UBS; Piper Jaffray; Wachovia.; Morgan Keegan; and Genworth Financial.

220. As noted above, at least twelve current or former brokers at major Wall Street and other firms have been targeted for possible indictment by the DOJ or notified that they are part of the DOJ's investigation: Hertz, Gruer, Raz, Marsh, MacFaddin, Salvadore, Ghavami, Packer, Towne, Goldberg, Saunders and McConnell. As outlined above, the DOJ has indicted or issued informations or obtained convictions against CDR and its officers Rubin, Zarefsky and Wolmark, Carollo of RBoC and GE/Trinity entities, Steven Goldberg of GE/Trinity entities and FSA, Grimm of GE/Trinity entities, Douglas Campbell of Bank of America and Piper Jaffray, and Ghavami, Heinz and Welty of UBS in connection with the conspiracy described herein. The DOJ has also obtained guilty pleas from Naeh, Rothman, and Douglas Goldberg of CDR; Zaino of UBS; Kanefsky of Kane; Scott-Jones of CFP; and Hertz of JPMorgan.

221. As a March 3, 2008 *Bond Buyer* article noted:

> Market participants said Friday that the individuals and firms known to have been subpoenaed or to have received target letters in the investigation may just be the tip of the iceberg. Most firms are not publicly disclosing the Justice Department actions until their 10-K financial filings are due. Securities firms appear to be including disclosures of the target letters in the regulatory filings for their employees, even before their 10-K filings are due, but banks and investment advisory firms are not subject to the same disclosure requirements.
> ….
>
> "Usually by the time an individual gets a target letter, the investigation is pretty far down the road and it's an indication that indictments are going to be issued in the relative near terms," said John K. Markey, a partner at Mintz Levin Cohn Ferris Glovsky & Popeo PC in Boston, and former federal and state prosecutor.
> Markey said that in a target letter, "The Department of Justice is informing an individual or his attorney that it already has substantial evidence of the commission of a federal crime. It usually is a sign that the individual is going to be indicted and it

> may prompt an attempt at a plea bargain or cooperation deal with the government."

THE DOJ GRANTS CONDITIONAL AMNESTY TO BANK OF AMERICA

222. On February 9, 2007, Bank of America announced that it was cooperating with the DOJ's investigation into bidding practices in the municipal bond business in exchange for leniency as part of the DOJ's amnesty program.

223. On February 9, 2007, Bank of America also issued a press release and stated the following:

> Bank of America Corporation has entered a leniency agreement with the United States Department of Justice in Connection with the Department's investigation into bidding practices in the municipal derivatives industry. This amnesty grant was as a result of the company voluntarily providing information to the Department before the Department began its investigation, as well as the company's continuing cooperation.
>
> The amnesty agreement provides that, in return for the company's continuing cooperation with the Justice Department's investigation, the Justice Department will not bring any criminal antitrust prosecution against the company in connection with matters that the company reported to the Justice Department.. .
> In addition, in a matter involving the Internal Revenue Service (IRS), Bank of America has agreed to a $14.7 million settlement with the IRS relating to the company's role in providing guaranteed investment contracts and other agreements in connection with certain "blind pool" bond transactions.

224. It was reported that key derivatives officials at the bank were on "administrative leave," including Pinard.

225. On February 27, 2009, Bank of America, in its SEC Form 10-K at page 154, stated the following:

> **Municipal Derivatives Matters**
> The Antitrust Division of the U.S. Department of Justice (DOJ), the SEC, and the IRS are investigating possible anticompetitive bidding practices in the municipal derivatives industry involving various parties, including BANA, from the early 1990s to date.

> The activities at issue in these industry-wide government investigations concern the bidding process for municipal derivatives that are offered to states, municipalities and other issuers of tax-exempt bonds. The Corporation has cooperated, and continues to cooperate, with the DOJ, the SEC and the IRS. On February 4, 2008, BANA received a Wells notice advising that the SEC staff is considering recommending that the SEC bring a civil injunctive action and/or an administrative proceeding "in connection with the bidding of various financial instruments associated with municipal securities." An SEC action or proceeding could seek a permanent injunction, disgorgement plus prejudgment interest, civil penalties and other remedial relief.
>
> ****
>
> On January 11, 2007, the Corporation entered into a Corporate Conditional Leniency Letter (the Letter) with DOJ. Under the Letter and subject to the Corporation's continuing cooperation, DOJ will not bring any criminal antitrust prosecution against the Corporation in connection with the matters that the Corporation reported to DOJ. Subject to satisfying DOJ and the court presiding over any civil litigation of the Corporation's cooperation, the Corporation is eligible for (i) a limit on liability to single, rather than treble, damages in certain types of related civil antitrust actions, and (ii) relief from joint and several antitrust liability with other civil defendants.
>
> ****
>
> Beginning in April 2008, the Corporation and BANA received subpoenas, interrogatories and/or civil investigative demands from a number of state attorneys general requesting documents and information regarding municipal derivatives transactions from 1992 through the present. The Corporation and BANA are cooperating with the state attorneys general.

226. In December of 2010, Bank of America announced that it had reached administrative settlements on non-antitrust claims with the SEC, the IRS and the Office of the Comptroller of the Currency.

ONGOING NATURE OF ALLEGED CONSPIRACY

227. Acts in furtherance of the alleged conspiracy have taken place since March 12, 2004, the date four years prior to when the original complaint in this matter was filed.

Fairfax County, Virginia v. Wachovia Bank, N.A. et al., 08 Civ. 432 (D.D.C. filed on March 12, 2008) (the "*Fairfax* action"). These include the submission of sham courtesy bids in furtherance of the alleged conspiracy, the provision by Broker Defendants and Broker co-conspirators of confidential information concerning bids by Provider Defendants and Provider co-conspirators, the collusive exchange of pricing information on negotiated or bidded transactions (examples of which have been provided above) and direct discussions among Provider Defendants and Provider co-conspirators regarding the pricing of trades on Municipal Derivatives.

228. As noted above, Bank of America's 2009 SEC filing states that the governmental investigations cover the period from the early 1990s "to date."

229. Many of the individuals targeted by the DOJ for prosecution did not leave the employ of their respective Defendant employers until 2006, 2007, or 2008. These include: Towne of Piper Jaffray (left in January of 2008); Zaino of UBS (left in 2007); Salvadore of Bear Stearns (left in July of 2008); MacFaddin of JPMorgan (left in March of 2008); Pinard of Bank of America (left in February of 2007); Hertz of JPMorgan (left in December of 2007); Ghavami of UBS (left in December of 2007); Saunders of Wachovia (left in July of 2008); Grimm of the GE/Trinity entities (left in 2007); Gruer of JPMorgan (left in June of 2006); and Douglas Goldberg of CDR (left in September of 2006). One—McConnell of Wachovia—only worked at Wachovia from 2005 to July of 2008. Thus, it is reasonable to infer that their anticompetitive practices have continued to at least the times of their respective departures. Others, like Stallone of IMAGE, Rosenberg of Sound Capital, Frasco of Natixis (formerly CDC) or Murphy, formerly of Bank of America and now at Winters, are still currently employed by a Defendant.

230. With the potential exception of Bank of America, no Provider Defendant, Provider co-conspirator, Broker Defendant, or Broker co-conspirator has effectively withdrawn

from the alleged conspiracy and their respective refusals to acknowledge their misconduct are ongoing acts in furtherance of the conspiracy.[5]

231. Many of the Municipal Derivatives transactions that are the subject of this Complaint and were entered into prior to March of 2004 are ongoing. The adverse effects Class members are experiencing from them are ongoing as well and constitute a continuing violation of the antitrust laws.

232. Similarly, while Jefferson County entered into collusive swap deals involving Bear Stearns, JPMorgan and Bank of America in June of 2004, the adverse effects of those rigged deals continue to the present and constitute a continuing violation of the antitrust laws.

HISTORY OF FRAUD IN THE MUNICIPAL DERIVATIVES MARKET

233. The wrongful conduct alleged herein is not the first time that Wall Street firms have run afoul of laws designed to prevent unfair profiteering on the proceeds of a bond issuance. In 1998, 21 firms were sanctioned for involvement in fraudulent activities that raised the price on Treasury bonds sold to local governments, driving down the yield, to avoid restrictions on how much they could earn. This so-called "yield-burning" scandal led to

[5] On September 3, 2008, after the initial Consolidated Amended Complaint in this matter was filed, JPMorgan announced that it was shutting down its unit selling debt derivatives to municipalities. The announcement came on the heels of a lawsuit filed in federal court on August 29, 2008 by the Erie, Pennsylvania school district, which alleged that JPMorgan and a Pennsylvania financial adviser colluded to reap more than $1 million in excessive fees on a 2003 Municipal Derivative deal. The lawsuit also named IMAGE and Martin Stallone as defendants and alleged that they had knowledge of and participated in "anti-competitive collusive conduct." Christopher "Kit" Taylor, who ran the Municipal Securities Rulemaking Board from 1978 to 2007, ascribed JPMorgan's closure to an effort to protect the company's reputation. "It cuts down on all the bad publicity," he said. He went on to add "I wonder if they are trying to get ahead of the Justice Department's decision . . . . They want, when that comes out, to say we're out of that business." At no time has JPMorgan made any effort to disavow the conspiracy alleged here.

settlements of $172 million as a result of misconduct on 3600 separate municipal bond issues. Piper Jaffray, one of the Provider Defendants here, was involved in the earlier municipal bonds scandal.

234. Likewise, in 2002, Stifel Nicolaus broker Robert Cochran paid $220,000 to settle civil allegations against him in connection with bid rigging on a GIC transaction with the Oklahoma Turnpike Authority ("OTA") in 1989 and a forward contract with OTA in 1992. In the former instance, the bid was rigged in favor of AIG, using a "last look." The "last look" was used to deter cheating by Provider Defendants and/or Bank of America by allowing the pre-designated winner to confirm that the other bidders had submitted non-competitive, sham bids before the auction closed.

CLASS ACTION ALLEGATIONS

235. Plaintiffs bring this action on behalf of themselves and as a class action under the provisions of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the following Class:

> All state, local and municipal government entities, independent government agencies and private entities that purchased Municipal Derivatives directly from a Provider Defendant, or through a Broker Defendant, at any time from January 1, 1992 through August 18, 2011 in the United States and its territories or for delivery in the United States and its territories.

236. Plaintiffs do not know the exact number of class members because such information is in the exclusive control of the Provider Defendants, the Provider co-conspirators, the Broker Defendants, the Broker co-conspirators, and unnamed co-conspirators. But due to the nature of the trade and commerce involved, Plaintiffs believe that there are thousands of Class members as above described, the exact number and their identities being known by the Provider

Defendants, Provider co-conspirators, the Broker Defendants, the Broker co-conspirators, and unnamed co-conspirators.

237. The Class is so numerous and geographically dispersed that joinder of all members is impracticable.

238. There are questions of law and fact common to the Class, including:

a. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, maintain or stabilize prices, and rig bids and allocate customers and markets of Municipal Derivatives;

b. The identity of the participants of the alleged conspiracy;

c. The duration of the alleged conspiracy and the acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;

d. Whether the alleged conspiracy violated Section 1 of the Sherman Act (15 U.S.C. § 1);

e. Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of the Plaintiffs and the other members of the Class;

f. The effect of the alleged conspiracy on the prices of Municipal Derivatives sold in the United States during the Class Period;

g. Whether Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from the Plaintiffs and the other members of the Class; and

h. The appropriate class-wide measure of damages.

239. Plaintiffs are members of the Class, Plaintiffs' claims are typical of the claims of the Class members, and Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs are purchasers of Municipal Derivatives, and their interests are coincident with, and not antagonistic to, those of the other members of the Class.

240. Plaintiffs are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

241. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

242. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

243. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Class is readily definable and is one for which records should exist. Prosecution as a class action will eliminate the possibility of repetitious litigation. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. This class action presents no difficulties in management that would preclude maintenance as a class action.

TRADE AND INTERSTATE COMMERCE

244. The activities of Defendants and their co-conspirators, as described in this Complaint, were within the flow of and substantially affected interstate commerce.

245. During the Class Period, Defendants and their co-conspirators issued and/or sold Municipal Derivatives in a continuous and uninterrupted flow of interstate commerce

to class members located in states all across the nation, other than the states in which Defendants and their co-conspirators were citizens.

246. The conspiracy in which the Defendants and their co-conspirators participated had a direct, substantial, and reasonably foreseeable effect on United States commerce.

CAUSE OF ACTION

247. Plaintiffs hereby sue Defendants for participating in a conspiracy to fix, maintain or stabilize the price of, and to rig bids and allocate customers and markets for, Municipal Derivatives sold in the United States and its territories in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

248. The combination and conspiracy alleged herein has had the following effects, among others:

a. Price competition in the sale of Municipal Derivatives has been restrained, suppressed and/or eliminated in the United States;

b. Bids charged by Defendants and their co-conspirators to Plaintiffs and the members of the Class for Municipal Derivatives were fixed, stabilized and maintained at non-competitive levels throughout the United States;

c. Customers and markets of Municipal Derivatives were allocated among Defendants and their co-conspirators;

d. Plaintiffs and the other members of the Class received lesser interest rates on Municipal Derivatives than they would have received in a competitive marketplace, unfettered by Defendants and their co-conspirators' collusive and unlawful activities;

e. Competition in the sale of Municipal Derivatives was restrained, suppressed and eliminated in the United States; and

f. As a direct and proximate result of the illegal combination, contract or conspiracy, Plaintiffs and the members of the Class have been injured and financially damaged in their businesses and property, in amounts to be determined.

249. As a result of this combination and conspiracy, Plaintiffs and members of the Class suffered injury to their business and property.

250. Pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, Plaintiffs seek to recover treble damages and the costs of this suit, including reasonable attorneys' fees, against Defendants for the injuries sustained by Plaintiffs and the members of the Class by reason of the violations alleged herein.

ACCRUAL OF CLAIM, CONTINUING VIOLATION, EQUITABLE TOLLING, AND FRAUDULENT CONCEALMENT

251. Plaintiffs had no knowledge of the combination and conspiracy alleged herein, or of any facts that might have led to the discovery thereof in the exercise of reasonable diligence, prior to the Bank of America's announcement of cooperation with the DOJ and the subsequent discussions with Bank of America, which revealed the scope of the claimed conspiracy.

252. Plaintiffs could not have determined the nature of, scope of, or full participants in, the alleged conspiracy from press reports made public prior to the filing of the *Fairfax* action. The claims asserted herein relate back to the filing of that action.

253. This inability of Plaintiffs and Class members to confirm the true nature of the alleged conspiracy from such press reports is confirmed by public statements made at the

time of the disclosure of subpoenas issued by the DOJ in late 2006. For example, in a *Bond Buyer* article dated December 22, 2006, Carol Lew, president of the National Association of Bond Lawyers, was quoted as saying "[r]ight now, there is a lack of public information. . . .We don't know if any of these allegations are true or what the facts are and that tempers everything."

254. Defendants and their co-conspirators have committed continuing violations of the antitrust laws resulting in monetary injury to Plaintiffs. These violations constitute injurious acts which restart the applicable statute of limitations.

255. In addition, Defendants' and their co-conspirators' agreement, understanding and conspiracy in violation of the antitrust laws was kept secret until shortly before the initial complaints in this matter were filed. As a result, Plaintiffs and the Class members were unaware of Defendants' unlawful conduct alleged herein and did not know that they were paying artificially high prices for Municipal Derivatives throughout the United States throughout the Class Period, Defendants and their co-conspirators affirmatively and fraudulently concealed their unlawful conduct.

256. Plaintiffs and the Class members did not discover, nor could have discovered through reasonable diligence, that Defendants and their co-conspirators were violating the antitrust laws until shortly before this litigation was initially commenced, because Defendants and their co-conspirators used deceptive and secret methods to avoid detection and to affirmatively conceal their violations.

257. Neither Defendants nor their co-conspirators told Plaintiffs or other class members that they were rigging bids or engaging in the other unlawful collusive practices alleged herein. By its very nature, Defendants' and their co-conspirators' bid rigging and price-fixing conspiracy was inherently self-concealing.

258. As pointed out above, to the contrary, pursuant to the IRS regulations cited above, each Provider Defendant and Provider co-conspirator was required to certify in connection with a Municipal Derivatives transaction that it had not consulted with other potential Providers, that its bid was not submitted solely as a courtesy bid, and that the bid was determined without regard to an agreement with another issuer or other person. Such certifications were made repeatedly to Plaintiffs who relied on them and, in so relying, did not undertake further inquiry if such agreements had occurred.

259. With respect to negotiated Municipal Derivative transactions, Defendants supplied false market pricing letters certifying that the pricing on a negotiated deal reflected a fair market price. Plaintiffs and members of the Class relied on these false certifications.

260. Likewise, Plaintiffs were falsely assured that the Broker Defendants and Broker co-conspirators were acting as their fiduciary agents and were soliciting bids for Municipal Derivatives that were fair and competitively priced and that complied with specific IRS rules and regulations that required Broker Defendants and Broker co-conspirators to obtain at least three commercially reasonable bids. Such assurances were made repeatedly to Plaintiffs who relied on them and, in so relying, did not undertake further inquiry if such agreements had occurred.

261. Again, contemporaneous statements made at the time the DOJ issued subpoenas in late 2006, support this conclusion. In the December 22, 2006 *Bond Buyer* article cited above, Patrick Born ("Born"), Chief Financial Officer of the city of Minneapolis and head of the debt committee of the Government Finance Officers Association, noted that "[w]e've been relying on certifications [that bids have been competitive]. Are we going to discover that people are simply not doing what they said they were doing, or is it something else?" In a Bloomberg

article dated December 7, 2006, Born observed that "[t]he way these folks [providers and brokers] have operated, largely by telephone and largely out of public view, are [*sic*] not as transparent as they might be . . . ."

262. The practices used by Plaintiffs are illustrative in this regard. Broker Defendants or Broker co-conspirators (such as, for example, IMAGE) routinely submitted to Baltimore a standardized "Certificate of Bidding Agent" saying that at least three offers on a proposed Municipal Derivatives deal were received from "reasonably competitive" providers and asserting "[t]hat the offers were solicited on a competitive basis. All offerors had an equal opportunity to bid and no offeror was given the opportunity to review the other offers (a last look) before submitting its offer." The standardized form specifically stated that "the foregoing information may be relied upon" by Baltimore. Broker Defendants and Broker co-conspirators falsely made these representations to Baltimore, thus causing it to believe that the bids it received from them for Municipal Derivatives transactions were the result of a full and fair competitive process.

263. Broker Defendants and Broker co-conspirators were not the only ones to make such fraudulent representations to Baltimore. Provider Defendants and Provider co-conspirators did so as well. Provider Defendants and Provider co-conspirators submitted a standardized "Bid Form & Acknowledgement" or "Competitive Bid Form" for proposed Municipal Derivatives transactions. An exemplar of this form is one submitted to Baltimore on April 30, 2003 by Lehman, the winning bidder on an escrow fund investment (where UBS, Bank of America, and Wachovia were unsuccessful bidders), in which Lehman acknowledged that Baltimore would rely on its certification and asserted that "[w]e did not consult with any other potential provider about this bid, the bid was determined without regard to any other formal or

informal agreement we have with the City . . . or any other person (whether or not in connection with the Bonds), and the bid is not being submitted solely as a courtesy to the City . . . or any other person." Lehman also asserted that "we did not have the opportunity to review other bids *(i.e.*, a 'last look') before providing a bid." Other Provider Defendants or Provider co-conspirators routinely made such representations in bid forms on Municipal Derivatives deals submitted to Baltimore. Provider Defendants and Provider co-conspirators falsely made these representations to Baltimore, thus causing it to believe that the bids it received from them for Municipal Derivatives transactions were the result of a full and fair competitive process.

264. The Bucks County Plaintiffs also used standardized bidding forms. The one used by Central Bucks, for example, contained the following language: "[p]roviders are hereby notified that by submitting a bid a representation is deemed to have been made that the provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the borrower or any other person (whether or not in connection with the bond issue), and that the bid is not being submitted solely as a courtesy to the borrower or any other person for purposes of satisfying the requirements that (a) the borrower receive at least three bids from providers that the borrower solicited under a bona fide solicitation, and (b) at least one of the three bids is from a reasonably competitive provider." In concealment of the alleged conspiracy, Provider Defendants and Provider co-conspirators falsely made these representations to the Bucks County Plaintiffs, thus causing them to believe that the bids they received from them for Municipal Derivatives transactions were the result of a full and fair competitive process.

265. Accordingly, Plaintiffs and Class members could not have discovered the violations alleged herein earlier until shortly before the filing of this Complaint because

Defendants and their co-conspirators conducted their conspiracy secretly, concealed the nature of their unlawful conduct and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection.

266. Defendants and their co-conspirators engaged in a successful price-fixing conspiracy concerning Municipal Derivatives, which they affirmatively concealed, at least in the following respects:

a. By meeting secretly (including use of private telephonic communications from Defendants' and co-conspirators' Municipal Derivatives trading desks) to discuss prices, customers and markets of Municipal Derivatives sold in the United States and elsewhere;

b. By evading the audiotaping on the Provider Defendants' and Provider co-conspirators' Municipal Derivatives trading desks through the use, *inter alia*, of cellular telephones, Blackberries and face-to-face meetings

c. By agreeing among themselves at meetings and in communications not to discuss publicly, or otherwise reveal, the nature and substance of the acts and communications in furtherance of their illegal scheme;

d. By intentionally creating the false appearance of competition by engaging in sham auctions in which the results were pre-determined;

e. Through covert sharing of profits or other secret compensation paid to losing bidders;

f. By secretly communicating about bids that would be won or lost by the Provider Defendants and Provider co-conspirators;

g. By paying kickbacks to Broker Defendants and Broker co-conspirators

h. By submitting cover or courtesy bids, or unrealistically low or other artificial bids, and/or deliberately losing bids, to create the appearance of competition where there was none; and

i. By covert agreements not to bid.

267. Specific examples of concealing activity, in addition to those described above, include the following. In one instance where Rosenberg of Sound Capital meant to send an e-mail to a Provider Defendant giving a secret "last look," he mistakenly tapped the "Reply All" key, so that the e-mail was also sent to the lawyer for the issuer. When that attorney called Rosenberg to inquire about what was going on, Rosenberg lied about the purpose of the e-mail. As another example, Naeh of CDR would send conspiratorial e-mails to persons at Bank of America, such as Pinard, through his personal GoAmerica account rather than his office account. On the Bank of America Municipal Derivatives trading desk, concealing activities were rampant. The CW often told co-conspirators to call him on his cellular phone in order to avoid audiotaping of his conversations with them. It was common for traders to ask if they could go off the desk when bidding or to tell a co-conspirator "I'll call you back later", *i.e.*, from a safe telephone. Campbell of Bank of America circumvented the capture of e-mails sent on his Bank of America-provided Blackberry handheld device by contacting the Blackberries of co-conspirators (including Towne of Piper Jaffray) directly, through the use of a Personal Identification Number.

268. The Provider Defendants and Provider co-conspirators also concealed the alleged conspiracy by failing to apprise Plaintiffs of the existence of audiotapes from their respective Municipal Derivatives trading desks that revealed collusive activities and by reusing and overwriting the evidence contained on such audiotapes. As a result of the latter practice, evidence relevant to the claims here may have become inaccessible to Plaintiffs. Once the

existence of the audiotapes still in existence became known, they were seized by the DOJ and Plaintiffs were foreclosed from access to them, thereby rendering impossible the production of the audiotapes and their use by Plaintiffs in the exercise of due diligence.

269. Other examples of concealing activity relate to misleading press statements made when there began to be public reports about the subpoenas issued as part of the federal probes. For instance, a November 17, 2006 report on the subpoenas in *Bond Buyer* indicated that: (a) Sound Capital asserted that it was unaware of any claims or charges against it and that its business continued "uninterrupted"; (b) another provider indicated that it had no awareness of any charges involving its own practices; (c) CDR asserted that it had acted "appropriately" in connection with the investigated matters; and (d) CDC asserted that it was "simply a fact witness" and that investigators "just want to know what our involvement in the industry is." Similarly, in a May 18, 2007 Bloomberg news report, JPMorgan indicated that it was not a target of the DOJ probe and was merely contacted by the DOJ and SEC about bidding "and related matters in public finance." In the same article, Charles Youtz, a Vice-President of Baum, assured the public that "[w]e do not anticipate any impact on the reputation of [*sic*] financial viability of the firm." These statements and others like them, upon which Plaintiffs could reasonably rely, were intended to be misleading and did mislead Plaintiffs about the scope of, and participants in, the alleged conspiracy.

270. The DOJ has also charged Heinz of UBS with witness tampering in addition to fraud and conspiracy. In 2006, after learning about the DOJ investigation, he told one conspirator to meet with another to coordinate their stories about a rigged deal, according to the government's indictment.

271. Despite the exercise of due diligence by Plaintiffs and the Class members, they did not discover the conspiracy until shortly before the initial complaints were filed in this matter. Because the alleged conspiracy was both self-concealing and affirmatively concealed by Defendants and their co-conspirators, Plaintiffs and the Class members had no knowledge of the alleged conspiracy, or of any facts or information which would have caused a reasonably diligent person to investigate whether a conspiracy existed, until shortly before the initial complaints were filed in this matter. Moreover, none of the facts or information available to Plaintiffs and the Class members prior to then, if investigated with reasonable diligence, could or would have led to the discovery of the conspiracy. As a result of Defendants and their co-conspirators' fraudulent concealment, all applicable statutes of limitations affecting the Plaintiffs' and the Class's claims have been tolled.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray as follows:

A. That the Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure;

B. That the contract, combination or conspiracy, and the acts done in furtherance thereof by Defendants and their co-conspirators, be adjudged to have been a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

C. That judgment be entered for Plaintiffs and members of the Class against Defendants for treble damages sustained by Plaintiffs and the members of the Class as allowed by law, together with the costs of this action, including reasonable attorneys' fees;

D. That Plaintiffs and the Class be awarded pre-judgment and post-judgment interest at the highest legal rate from and after the date of service of this Complaint to the extent provided by law; and

E. That Plaintiffs and members of the Class have such other, further or different relief as the case may require and the Court may deem just and proper under the circumstances.

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury of all of the claims asserted in this Complaint so triable.

Dated: October 8, 2013

By:_____

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EXHIBIT 2

CLASS SETTLEMENT AGREEMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MUNICIPAL DERIVATIVES ANTITRUST LITIGATION	Master Docket No. 08 Civ. 2516 (VM) (GWG) MDL No. 1950
This Document Relates to: ALL ACTIONS	

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 10th day of February 2016, by and between defendant Société Générale SA (as more fully defined below, "Defendant") and named class plaintiffs the City of Baltimore, Maryland, and the Central Bucks School District (collectively, "Class Plaintiffs"), for themselves and on behalf of each Class Member[1] in *In re Municipal Derivatives Antitrust Litigation*, MDL No. 1950. This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, Class Plaintiffs have alleged, among other things, that (1) Defendant violated Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, by illegally rigging bids, limiting competition, and fixing prices in the alleged market for Municipal Derivative Transactions in the United States and its territories; and (2) these acts caused Class Members to incur monetary damages;

WHEREAS, Defendant has denied and continues to deny (1) each and all of the claims and allegations of wrongdoing made by Class Plaintiffs in the Action and maintains that it has meritorious defenses; (2) all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action, and contends that the factual allegations made in the Action relating to it are materially inaccurate; and (3) that Class Plaintiffs or any Class Member were harmed by any conduct of Defendant alleged in the Action or otherwise;

WHEREAS, Class Plaintiffs, for themselves and on behalf of each Class Member, and Defendant agree that neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law

[1] All capitalized terms shall have the meaning set forth herein in the text or in ¶ 1 of this Agreement.

or of any liability or wrongdoing by Defendant or of the truth of any of the claims or allegations alleged in the Action;

WHEREAS, Defendant agrees to cooperate with Class Plaintiffs' Counsel and Class Plaintiffs as set forth in ¶ 21, below, of this Agreement;

WHEREAS, arm's length settlement negotiations have taken place, through counsel, between Defendant and Class Plaintiffs, and this Agreement embodies all of the terms and conditions of the Settlement between Defendant and Class Plaintiffs, both individually and on behalf of each Class Member;

WHEREAS, Class Plaintiffs' Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defenses thereto and the applicable law, that (i) it is in the best interests of the Class to enter into this Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Class and (ii) the Settlement set forth herein is fair, reasonable and adequate and in the best interests of Class Members; and

WHEREAS, Defendant expressly denies liability but has nevertheless agreed to enter into this Agreement solely to avoid further the expense, inconvenience, and the distraction of burdensome and protracted litigation.

NOW, THEREFORE, IT IS HEREBY AGREED by and among the Class Plaintiffs (for themselves and each Class Member) and Defendant, by and through their respective counsel or attorneys of record, that, subject to the approval of the Court, the Action as against Defendant shall be finally and fully settled and releases extended, as set forth below.

A. Definitions

1. As used in this Agreement the following capitalized terms have the meanings specified below.

(a) "Action" means *In re Municipal Derivatives Antitrust Litigation*, MDL No. 1950, Master Docket No. 08-02516 (VM) (GWG), which is currently pending in the U.S. District Court for the Southern District of New York, and all of the actions filed in or transferred to the U.S. District Court for the Southern District of New York for coordination or consolidation with MDL No. 1950, identified in Exhibit A, attached hereto, and all actions that may be transferred prior to the time Notice is mailed or that are otherwise based, in whole or in part, on the conduct alleged in MDL No. 1950.

(b) "Agreement" means this Settlement Agreement, together with any exhibits attached hereto, which are incorporated herein by reference.

(c) "Alleged Broker Co-Conspirator" means Feld Winters Financial LLC, First Southwest Company, Kinsell Newcomb & De Dios Inc., Mesirow Financial, Morgan Keegan & Co., Inc., PackerKiss Securities, Inc., and any other broker of Municipal Derivative Transactions that is alleged to be a co-conspirator in the Action, as well as all current and former employees, direct and indirect parents, subsidiaries, affiliates, predecessors and successors of each of the foregoing.

(d) "Alleged Broker Defendant" means Investment Management Advisory Group, Inc., CDR Financial Products, Winters & Co. Advisors, LLC, George K. Baum & Co., Sound Capital Management, Inc., Piper Jaffray &

Co. and any other broker of Municipal Derivative Transactions that is added as a defendant in the Action prior to the time that the Notice is mailed, as well as all current and former employees, direct and indirect parents, subsidiaries, affiliates, predecessors and successors of each of the foregoing.

(e) "Alleged Provider Co-Conspirator" means AIG Financial Products Corp., SunAmerica Life Assurance Co., Financial Security Assurance Holdings, Ltd., Financial Security Assurance, Inc., Trinity Funding Co. LLC, GE Funding Capital Market Services, Inc., Lehman Brothers, XL Capital Ltd., XL Asset Funding Co. I LLC, XL Life Assurance & Annuity, Inc., Wachovia Bank, N.A., n/k/a Wells Fargo Bank, N.A., and Wells Fargo & Company and any other provider of Municipal Derivative Transactions that is alleged to be a co-conspirator in the Action prior to the time that the Notice is mailed, as well as all current and former employees, direct and indirect parents, subsidiaries, affiliates, predecessors and successors of each of the foregoing.

(f) "Alleged Provider Defendant" means Bank of America, N.A., Bear, Stearns & Co., Inc., JP Morgan Chase & Co., Morgan Stanley, National Westminster Bank Plc, Natixis Funding Corp., f/k/a IXIS Funding Corp., and before that, f/k/a CDC Funding Corp., Piper Jaffrey & Co., UBS AG, and any other provider of Municipal Derivative Transactions that is added as a defendant in the Action prior to the time that the Notice is mailed, as well as all current and former employees, direct and indirect parents,

subsidiaries, affiliates, predecessors and successors of each of the foregoing.

(g) "Authorized Claimant" means any Class Member who, in accordance with the terms of this Agreement, is entitled to a distribution from the Settlement Fund pursuant to any Distribution Plan or Order of this Court.

(h) "Claims Administrator" means the Notice and/or Claims Administrator(s) to be approved by the Court.

(i) "Class" is defined, for purposes of this Settlement only, to include all state, local and municipal government entities, independent government agencies, quasi-government, non-profit and private entities that (i) purchased by negotiation, competitive bidding or auction Municipal Derivative Transactions directly from Société Générale or any Alleged Provider Defendant or Alleged Provider Co-Conspirator, or (ii) purchased by negotiation, competitive bidding or auction Municipal Derivative Transactions brokered by any Alleged Broker Defendant or Alleged Broker Co-Conspirator, at any time from January 1, 1992 through August 18, 2011, in the United States and its territories or for delivery in the United States or its territories, except that excluded are (a) Société Générale; and (b) any Alleged Provider Defendant, Alleged Provider Co-Conspirator, Alleged Broker Defendant, or Alleged Broker Co-Conspirator. Also excluded from the class are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

(j) "Class Member" means a Person who is a member of the Class defined in ¶ 1(i) and has not timely and validly excluded itself from the Class in accordance with the procedure to be established by the Court.

(k) "Class Plaintiffs" means the City of Baltimore, Maryland, and the Central Bucks School District.

(l) "Class Plaintiffs' Counsel" means (i) the law firms of Boies, Schiller & Flexner LLP, Hausfeld LLP, and Susman Godfrey LLP; and (ii) any other attorney or law firm that seeks to receive any portion of the attorneys' fees that may be awarded by the Court in connection with this Settlement.

(m) "Court" means the U.S. District Court for the Southern District of New York.

(n) "Defendant" means defendant Société Générale, S.A., as well as all current and former employees, direct and indirect parents, subsidiaries, affiliates, predecessors and successors of each of the foregoing.

(o) "Distribution Plan" means any plan or formula of allocation of the Gross Settlement Fund, to be approved by the Court upon notice to the Class, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants. Any Distribution Plan is not part of this Agreement, and Defendant shall have no responsibility or liability with respect to the Distribution Plan.

(p) "Effective Date" means the first date by which all of the events and conditions specified in ¶ 27, below, have occurred.

(q) "Escrow Agent" means the entity jointly designated by Class Plaintiffs' Counsel and Defendant, and any successor agent, to maintain the Settlement Fund.

(r) "Execution Date" means the date on which this Agreement is executed by the last party to do so.

(s) "Final" means, with respect to any order of a court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes "Final" when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this ¶ 1(s), an "appeal" includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order adopting or approving a Distribution Plan, and/or to any order issued in respect of an application for attorneys' fees and expenses pursuant to ¶¶ 23-24, below, shall not in any way delay or prevent the Judgment from becoming Final.

(t) "Final Approval Order" means the Court's approval of the Settlement following preliminary approval thereof, notice to the Class and a hearing on

the fairness of the Settlement. Plaintiff will permit Defendant to review the form and substance of the proposed Final Approval Order and will provide it to Defendant seven days in advance of submission to the Court.

(u) "Gross Settlement Fund" means the Settlement Amount plus any interest that may accrue.

(v) "Judgment" means the order of judgment and dismissal of the Action with prejudice as to Defendant, the form of which shall be mutually agreed upon by the Settling Parties, and submitted to the Court for approval thereof.

(w) "MDL" means *In re Municipal Derivatives Antitrust Litigation*, MDL No. 1950, Master Docket No. 08-02516 (VM) (GWG), which is currently pending in the U.S. District Court for the Southern District of New York, and all of the actions filed in or transferred to the U.S. District Court for the Southern District of New York for coordination or consolidation with MDL No. 1950, identified in Exhibit A, attached hereto, and all actions that may be transferred prior to the time Notice is mailed or that are otherwise based, in whole or part, on the conduct alleged in MDL No. 1950

(x) "Municipal Derivative Transactions" means any investment vehicles that government and other entities eligible to issue tax-exempt debt now use or have used at any time since January 1, 1992 to (i) invest the proceeds of tax-exempt debt offerings while waiting to spend them for their given purposes or (ii) hedge or manage the interest rate risk associated with such debt offerings. These investment vehicles include the following types of transactions: (a) guaranteed investment contracts, or "GICs", both

collateralized and uncollateralized; (b) forward purchase, forward supply and forward delivery agreements; (c) repurchase agreements; (d) certificates of deposit, or "CDs," both collateralized and uncollateralized; (e) escrow agreements; (f) swaps; (g) options; (h) "swaptions;" (i) floors; (j) caps; (k) collars; and (l) any financial product encompassed by the description in Paragraphs 58-71 of the Corrected Third Consolidated Amended Class Action Complaint (dated October 9, 2013).

(y) "Net Settlement Fund" means the Gross Settlement Fund, less the payments set forth in ¶ 16(a)-(e), below.

(z) "Notice" means the form of notice of the proposed Settlement to be provided to Class Members as provided in this Agreement and the Preliminary Approval Order, as defined in ¶ 3, below.

(aa) "Person(s)" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, municipality, state, state agency, any entity that is a creature of any state, any government or any political subdivision, authority, office, bureau or agency of any government, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

(bb) "Proof of Claim and Release," means the form to be sent to Class Members, upon further order(s) of the Court, by which any Class Member may make a claim against the Net Settlement Fund.

(cc) "Released Claims" means all manner of civil claims, demands, debts, obligations, rights, actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, damages whenever incurred, and liabilities of any nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, in law or in equity, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have against Société Générale and/or any of the Releasees relating in any way to any conduct prior to the date of the settlement and arising out of or related in any way to (i) the purchase of Municipal Derivative Transactions in the United States or its territories or for delivery in the United States or its territories during the period from January 1, 1992 to August 18, 2011, or (ii) any conduct alleged in the action or that could have been alleged in the Action against Société Générale and/or any of the Releasees by the Class Plaintiffs, any Class Members or Releasors. The Released Claims shall include but are not limited to all claims based on any purported conspiracy between Société Générale and/or any of the Releasees and any Alleged Provider Defendant, Alleged Broker Defendant, Alleged Provider Co-Conspirator, or Alleged Broker Co-Conspirator (including, but not limited to, all claims under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, California's Cartwright Act, Cal. Bus. & Prof. Code § 16720, *et seq.*, New York's Donnelly Act, N.Y. Gen. Bus. Law § 340, *et seq.*, and any other federal or state statute or common law, or the law of any foreign jurisdiction), and all

claims based on any allegedly fraudulent or other tortious conduct by Société Générale and/or any of the Releasees arising out of allegations in the Action. This Release does not include claims that any Releasor has or may have related to alleged manipulation or attempted manipulation of LIBOR or other interest rate benchmarks. Released Claims shall only be released against Releasees, and all of Releasors' claims against any entity or entities other than Releasees shall remain in the Action, including all claims for damages or restitution against the non-settling defendants based on the sales and conduct of Defendant.

(dd) "Releasees" means Defendant, its predecessors, successors and assigns, its direct and indirect parents and subsidiaries, past and present affiliates, holding entities, and its respective current and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys, and representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. As used in this ¶ 1(dd), "affiliates" means entities controlling, controlled by or under common control with a Releasee.

(ee) "Releasors" means Class Plaintiffs and each and every Class Member on their own behalf and on behalf of their respective predecessors, successors and assigns, direct and indirect parents, subsidiaries, divisions, groups, and affiliates, their current and former officers, directors, employees, agents, and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. With respect

to any Class Member that is a government entity, Releasor includes any Class Member as to which the government entity has the legal right to release such claims. As used in this ¶ 1(ee), "affiliates" means entities controlling, controlled by or under common control with a Releasor.

(ff) "Settlement" means the settlement of the Released Claims set forth herein.

(gg) "Settlement Amount" means twenty five million four hundred twelve thousand five hundred U.S. dollars ($ 25,412,500).

(hh) "Settlement Fund" means the escrow account in which the Escrow Agent maintains the Settlement Amount after payment thereof by Defendant.

(ii) "Settling Parties" means Defendant and the Class Plaintiffs (for themselves and on behalf of each Class Member).

(jj) "Settling Party" means Defendant or any Class Plaintiff (for itself and on behalf of each Class Member).

B. Preliminary Approval Order, Notice Order, and Settlement Hearing

2. **Reasonable Best Efforts to Effectuate this Settlement**. The Settling Parties agree to cooperate with one another to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of this Agreement.

3. **Motion for Preliminary Approval**. Within forty-five (45) calendar days after the Execution Date, Class Plaintiffs' Counsel shall submit this Agreement to the Court and shall apply for entry of an order (the "Preliminary Approval Order") requesting, *inter alia*, preliminary approval of the Settlement, including certification of the Class for purposes of the Settlement only, and for a stay of all proceedings in the Action against the Releasees until the

Court renders a final decision on approval of the Settlement. The motion shall include the proposed form of an order preliminarily approving the Settlement.

4. **Stipulation to Certification of a Settlement Class.** The Settling Parties hereby stipulate for purposes of the Settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to Court approval, the following settlement class shall be certified as to Defendant:

> All state, local and municipal government entities, independent government agencies, quasi-government, non-profit and private entities that (i) purchased by negotiation, competitive bidding or auction Municipal Derivative Transactions directly from Société Générale or any Alleged Provider Defendant or Alleged Provider Co-Conspirator, or (ii) purchased by negotiation, competitive bidding or auction Municipal Derivative Transactions brokered by any Alleged Broker Defendant or Alleged Broker Co-Conspirator, at any time from January 1, 1992 through August 18, 2011, in the United States and its territories or for delivery in the United States or its territories, except that excluded are (a) Société Générale; and (b) any Alleged Provider Defendant, Alleged Provider Co-Conspirator, Alleged Broker Defendant, and Alleged Broker Co-Conspirator. Also excluded from the class are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

If the Settlement as described herein is finally disapproved by any court, is terminated as provided herein or is reversed or vacated following any appeal taken therefrom, then this stipulation for the purposes of Settlement that a class should be certified becomes null and void, and Defendant reserves all rights to contest that the Class should be certified.

5. **Notice to Class.** In the event that the Court preliminarily approves the Settlement, Class Plaintiffs' Counsel shall, within thirty (30) days thereafter, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Preliminary Approval Order, provide Class Members whose identities can be determined after reasonable efforts with notice of the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of the

proposed Settlement (the "Settlement Hearing") (unless another date is mutually agreed upon in writing by Defendant and Class Plaintiffs' counsel). The Notice shall also include the general terms of the Settlement set forth in this Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Application (as defined in ¶ 23, below), and a description of Class Members' rights to object to the Settlement, request exclusion from the Class, and/or appear at the Settlement Hearing. Plaintiffs shall provide the Notice to Defendants seven days in advance of submission to the Court for approval, and the text of the Notice shall be reviewed by Defendant before its submission to the Court.

6. **Publication**. Class Plaintiffs' Counsel shall cause to be published a summary of the notice ("Summary Notice") in accord with the notice plan submitted to the Court by Class Plaintiffs' Counsel and approved by the Court. Defendant shall not have any responsibility for providing notice of this Settlement to Class Members or for paying for the cost of providing notice of this Settlement to Class Members. Between the Execution Date and three months thereafter, the Settling Parties will attempt to mutually agree on any text of settlement-related public statements (including, but not limited to, press releases and websites) relating to any of the Settling Defendants that (a) does not appear verbatim in the Settlement Agreement; (b) will be used by Class Plaintiffs' Counsel and/or the Claims Administrator in any settlement-related public statement; and (c) differs from the text of settlement-related public statements upon which the Settling Parties previously have mutually agreed. Defendant will have five (5) business days to respond to any proposed language. If the Parties cannot agree upon the text, the dispute will be submitted to and resolved by Judge Layn R. Phillips as a final, binding, and non-appealable decision. Three months after the execution of the Agreement and thereafter, any settlement-related public statements made by Class Plaintiffs shall be consistent with

statements previously agreed upon by the parties or determined by Judge Phillips.

7. **Motion for Final Approval and Entry of Final Judgment**. Thirty (30) days prior to the date for the Settlement Hearing set by the Court in the Preliminary Approval Order, Class Plaintiffs' Counsel shall submit a motion for final approval of the Settlement by the Court, after notice to Class Members of the Settlement Hearing, pursuant to ¶¶ 5-6, above, and the Settling Parties shall jointly seek entry of the Final Approval Order and Judgment, which shall be reviewed and approved by Defendants before submission:

(a) fully and finally approving the Settlement contemplated by this Agreement and its terms as being fair, reasonable and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms and conditions;

(b) finding that the Notice given to Class Members as contemplated in ¶¶ 5-6, above, constitutes the best notice practicable under the circumstances and complies in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;

(c) directing that the Action be dismissed with prejudice as to Defendant and, except as provided for herein, without costs;

(d) discharging and releasing the Released Claims as to the Releasees;

(e) permanently barring and enjoining the institution and prosecution, by Class Plaintiffs and any Class Member, of any other action against the Releasees in any court asserting any of the Released Claims;

(f) reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration and enforcement of this Agreement;

(g) determining pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing entry of a final judgment as to Defendant; and

(h) containing such other and further provisions consistent with the terms of this Agreement to which the Settling Parties expressly consent in writing.

Sufficiently before the Settlement Hearing, Class Plaintiffs' Counsel also will request that the Court approve the application for attorneys' fees and expenses (as described below). Class Plaintiffs' Counsel also will timely request that the Court approve a proposed Distribution Plan.

C. Settlement Fund

8. **Payments made by Defendant.** Defendant shall pay by wire transfer twenty five million four hundred twelve thousand five hundred U.S. dollars ($25,412,500) of the Settlement Amount into the Settlement Fund within fifteen (15) business days after the the later of the Execution Date, or receipt by Defendant of written wiring instructions and a W-9 form. All interest earned by the Settlement Fund shall be added to and become part of the Gross Settlement Fund. The Settlement Amount shall not be subject to reduction, and upon the occurrence of the Effective Date, no funds may be returned to Defendant. The Escrow Agent shall only act in accordance with instructions mutually agreed by the Settling Parties in writing.

9. **Disbursements Prior to Effective Date.** No amount may be disbursed from the Gross Settlement Fund unless and until the Effective Date, except that upon written notice to the Escrow Agent by Class Plaintiffs' Counsel, with a copy to Defendant: (i) reasonable

costs of the Notice ("Notice and Administrative Costs") described in ¶¶ 5-6, above, may be paid from the Gross Settlement Fund as they become due; (ii) Taxes and Tax Expenses (as defined in ¶ 12, below) may be paid from the Gross Settlement Fund as they become due; and (iii) reasonable costs of the Escrow Agent ("Escrow Agent Costs") may be paid from the Gross Settlement Fund as they become due. Class Plaintiffs' Counsel will attempt in good faith to minimize the amount of Notice and Administrative Costs.

10. **Refund by Escrow Agent.** If the Class Plaintiffs do not seek final approval of the Settlement at least thirty (30) calendar days prior to the Settlement Hearing date set by the Court, or the Settlement as described herein is finally disapproved by any court or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, the Gross Settlement Fund, including all interest earned on such amount while held in the escrow account, excluding only (i) proper, previously disbursed Notice and Administrative Costs, (ii) proper, previously disbursed Taxes and Tax Expenses, and (iii) proper, previously disbursed Escrow Agent Costs (the sum of (i) – (iii) shall not exceed one million dollars ($1,000,000) for purposes of this paragraph), will be refunded, reimbursed, and repaid by the Escrow Agent to Defendant within three (3) business days after receiving notice pursuant to ¶31, below; except that if this Agreement terminates because Class Plaintiffs fail to timely seek final approval of the Settlement, the entirety of the Gross Settlement Fund, including all interest earned on such amount while held in the escrow account (with no deductions for expenses incurred whatsoever) will be refunded, reimbursed, and repaid by the Escrow agent to Defendant within three (3) business days after receiving notice pursuant to ¶ 31, below.

11. **No Additional Payments by Defendant.** Under no circumstances will Defendant be required to pay more than the Settlement Amount, as defined in ¶¶ 1(gg) and 8,

above. For purposes of clarification, the payment of any Fee and Expense Award (as defined in ¶ 24, below), the Notice and Administrative Costs, and any other costs associated with the implementation of this Agreement, as reflected in ¶16, below, shall be made exclusively from the Settlement Amount.

12. **Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 12, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(a) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2 by, *e.g.*, (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and properly filing applicable federal, state and local tax returns necessary or advisable with respect to the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this ¶ 12) shall be consistent

with this ¶ 12 and in all events shall reflect that all Taxes as defined in ¶ 12(b), below, on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶ 16, below;

(b) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon Defendant or its counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes (collectively, "Taxes"), and (ii) expenses and costs incurred in connection with the operation and implementation of this ¶ 12, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶ 12 (collectively, "Tax Expenses"), shall be paid out of the Gross Settlement Fund; in all events, neither Defendant nor its counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless Defendant and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Gross Settlement Fund without prior order from the Court and the

Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendant nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 12.

13. **Releases.** Upon the Effective Date, the Releasors, and any other Person claiming against the Gross or Net Settlement Fund (now or in the future) through or on behalf of any Releasor, shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever released, relinquished, and discharged all Released Claims against any and all of the Releasees and shall have covenanted not to sue any Releasee with respect to any such Released Claim, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Released Claim against the Releasees. Each Releasor shall be deemed to have released all Released Claims against the Releasees regardless of whether any such Releasor ever seeks or obtains by any means, including without limitation, by submitting a Proof of Claim and Release, any distribution from the Gross or Net Settlement Fund. Class Plaintiffs and Defendant acknowledge, and the Settlement Class members shall be deemed by operation of the Final Approval Order to have acknowledged, that the foregoing waiver and release was separately bargained for and a key element of the settlement of which this Release is a part.

14. **Unknown Claims/California Civil Code Section 1542.** The release set forth in ¶ 13, above, constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The release set forth in ¶ 13, above, also constitutes a waiver of any similar provision, statute, regulation, rule or principle of law or equity of any other state or applicable jurisdiction. The Releasors acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release fully, finally and forever all of the claims released in ¶ 13, above, and in furtherance of such intention, the release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

15. **Payment of Fees and Expenses.**

(a) Any amounts of fees and expenses that are awarded by the Court pursuant to this Agreement shall be paid out of the Gross Settlement Fund upon entry of the Court's order, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the settlement or any part thereof. Class Counsel is obligated to make appropriate refunds or repayments to the Settlement Fund if (i) the Effective Date does not occur; (ii) the Settlement Agreement is subject to successful collateral attack; or (iii) the fees or expenses awarded is reduced or reversed. Class Plaintiffs' Counsel shall make such refunds or repayments no later than thirty (30) days

after the occurence of the event triggering the obligation to make such refund or repayment occurs. The Defendant shall not be liable for any costs, fees, or expenses of any of Class Plaintiffs' or of any Class Member's respective attorneys, experts, advisors, agents, or representatives, and shall take no position regarding any application for same (assuming the application does not conflict with, and complies with, this Agreement).

(b) Any disputes involving the rights in this Paragraph 15 shall be resolved by Judge Layn R. Phillips by way of final, binding, and non-appealable decision.

D. Administration and Distribution of Gross Settlement Fund

16. **Distribution of Gross Settlement Fund.** The Claims Administrator, subject to such supervision and direction of the Court and/or Class Plaintiffs' Counsel as may be necessary or as circumstances may require, shall administer the claims submitted by Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants pursuant to the Distribution Plan. Class Plaintiffs' Counsel shall provide Defendant notice of their intent to make distribution from the Net Settlement Fund before making the first distribution from the Net Settlement Fund.

Subject to the terms of this Agreement and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

(a) to pay Notice and Administrative Costs;

(b) to pay Escrow Agent Costs;

(c) to pay all costs and expenses reasonably and actually incurred in assisting Class Members with the filing and processing of claims against the Net Settlement Fund;

(d) to pay the Taxes and Tax Expenses;

(e) to pay any Fee and Expense Award that is allowed by the Court, subject to and in accordance with the provisions of ¶¶ 15, 23-24; and

(f) to distribute the "Net Settlement Fund" to Authorized Claimants as allowed by the Agreement, any Distribution Plan, or order of the Court.

17. **Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter, and in accordance with the terms of this Agreement, the Distribution Plan, or such further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:

(a) Each Class Member who claims to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim and Release signed under penalty of perjury by an authorized official and supported by such documents as specified in the Proof of Claim and Release and as are reasonably available to such Class Member, except that, in the event the Notice so describes, the Claims Adminstrator may use prior Proof of Claim forms filed in connection with prior settlements in this Action;

(b) Except as otherwise ordered by the Court, each Class Member who fails to submit a Proof of Claim and Release within such period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Agreement and the Settlement set forth herein–except that, in the event the Notice so describes, the Claims Adminstrator may use prior Proof of Claim forms filed in connection with prior settlements in this Action, but shall in all other respects be subject to and bound by the provisions of this Agreement, the releases contained herein, and the Judgment;

(c) The Net Settlement Fund shall be distributed to Authorized Claimants substantially in accordance with a previously approved Distribution Plan, or a Distribution Plan to be approved by the Court upon such further notice to the Class as may be required. Any such Distribution Plan is not a part of this Agreement. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until the Effective Date; and

(d) All Class Members shall be subject to and bound by the provisions of this Agreement, the releases contained herein, and the Judgment with respect to all Released Claims, regardless of whether such Class Members seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Net Settlement Fund.

18. **No Liability for Distribution of Settlement Funds.** Neither the Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever

with respect to the investment or distribution of the Gross Settlement Fund, the Distribution Plan, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, the distribution of the Net Settlement Fund, or any losses incurred in connection with any such matters. Effective immediately upon the Execution Date, the Releasors hereby fully, finally, and forever release, relinquish, and discharge the Releasees and their counsel from any and all such liability. No Person shall have any claim against Class Plaintiffs' Counsel or the Claims Administrator based on the distributions made substantially in accordance with the Agreement and the Settlement contained herein, the Distribution Plan, or further orders of the Court.

19. **Balance Remaining in Net Settlement Fund.** If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class Plaintiffs' Counsel shall submit an additional distribution plan to the Court for approval.

E. Cooperation

20. **Stay of Discovery.** The Settling Parties agree to a stay of all discovery between Defendant and Class Plaintiffs or their advisors, subject to the provisions of ¶ 21, below, effective on the date this Agreement is executed. The stay will automatically be dissolved if (i) the Court does not enter the Preliminary Approval Order, the Final Approval Order, or the Judgment, or (ii) the Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated, modified, or reversed, unless all parties who are adversely affected thereby, in their sole discretion within thirty (30) calendar days from the date of the mailing of such ruling to such parties, provide written notice to all other parties hereto of their intent to proceed with the

Settlement under the terms of the Preliminary Approval Order, the Final Approval Order or the Judgment as modified on appeal.

21. **Defendant's cooperation.** Upon the execution of this Agreement, Defendant will provide reasonable discovery cooperation to Class Plaintiffs. Notwithstanding the foregoing, the Settling Parties hereby acknowledge that Defendant's level of discovery cooperation may be affected by the unavailability of former employees, the passage of time, and/or other factors beyond the control of Defendant. Limitations on Société Générale's discovery cooperation due to factors beyond the reasonable control of Société Générale shall not constitute a breach of this Agreement.

(a) Defendant's cooperation obligations shall only apply to Releasors who act with, by or through Class Plaintiffs' Counsel pursuant to this Agreement.

(b) Notwithstanding any other provision in this Agreement, Defendant may assert where applicable the attorney work-product doctrine, the attorney-client privilege, the common interest doctrine, the joint defense privilege and/or any other applicable privilege or protection with respect to any documents, interviews, declarations, and/or affidavits, depositions, testimony, material, and/or information requested under this Agreement with no requirement to provide a privilege log. Any documents, declarations, affidavits, deposition testimony and information provided to Class Plaintiffs' Counsel pursuant to this provision shall be covered by the protective orders in place in this case. None of the cooperation provisions are intended to, nor do they, waive any such privileges or protections.

Defendant agrees that its counsel will meet with Class Plaintiffs' Counsel as is reasonably necessary to discuss any applicable privilege or protection.

(c) If any document protected by the attorney-client privilege, attorney work-product doctrine, the common interest doctrine, the joint defense privilege and/or any other applicable privilege or protection is accidentally or inadvertently produced, the document shall promptly be returned to Defendant, and its production shall in no way be construed to have waived any privilege or protection attached to such document.

(d) Unless otherwise agreed by the Defendant and Class Plaintiffs' Counsel, the requested discovery shall not be broader than what could otherwise be obtained through compulsory process. Notwithstanding any other provision of this ¶ 21, in the event that Defendant believes that Class Plaintiffs' Counsel has unreasonably requested cooperation, Defendant and Class Plaintiffs' Counsel agree to meet and confer regarding such disagreement. Any outstanding disputes over the scope of Defendant's cooperation requirements shall be raised by mediation with Judge Layn R. Phillips. If resolution is sought from Judge Phillips, the disputed aspect of cooperation shall be held in abeyance until such resolution by Judge Phillips and such abeyance shall not constitute a breach of this Agreement.

(e) Class Plaintiffs' Counsel agree to use any and all of the information and documents obtained from Defendant only for the purpose of the Action, and agree to be bound by the terms of the protective orders entered in the Action.

22. Class Plaintiffs' Counsel agree, unless ordered by a court and consistent with due process, that under no circumstances shall Class Plaintiffs' Counsel produce documents obtained from Defendant to counsel for any plaintiff in the Action or any Class Member who excludes itself from the Class for purposes of the Settlement.

F. Attorneys' Fees and Reimbursement of Expenses

23. **Fee and Expense Application.** Defendant shall have no interest or right in or to any portion of the Gross Settlement Fund based on any ruling the Court makes on any application by Plaintiffs' Counsel for fees, costs or expenses. Class Plaintiffs' Counsel may, at their discretion and election, choose to submit an application or applications to the Court (the "Fee and Expense Application") for distributions to them from the Gross Settlement Fund, for an award of attorneys' fees or reimbursement of expenses incurred in connection with prosecuting the Action.

24. **Payment of Fee and Expense Award.** Any amounts that are awarded by the Court pursuant to ¶ 23, above (the "Fee and Expense Award"), shall be paid from the Gross Settlement Fund as provided in ¶ 16, above, and may be paid no earlier than the Effective Date. Defendant and the Releasees will take no position on any Fee and Expense Application, other than the timing of payment.

(a) Upon receipt of the Court's order granting attorney's fees and expenses, Plaintiffs' counsel's fees are payable from the Settlement Fund. Class Counsel is obligated to make appropriate refunds or repayments to the Settlement Fund if (a) the Effective Date does not occur; (b) the Settlement Agreement is subject to successful collateral attack; or (c) the fee or cost amount is reduced or reversed. No letter of credit is required.

25. **Award of Fees and Expenses not Part of Settlement.** The procedures for, and the allowance or disallowance by the Court of, the Fee and Expense Application are not part of the Settlement set forth in this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Agreement. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any Fee and Expense Award or any other order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Judgment and the Settlement of the Action as set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Award or Distribution Plan shall constitute grounds for termination of this Agreement.

26. **No Liability for Fees and Expenses of Class Plaintiffs' Counsel.** The Releasees shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Plaintiffs' Counsel pursuant to ¶¶ 23-24, above, and/or to any other Person who may assert some claim thereto, or any Fee and Expense Award that the Court may make in the Action.

G. Conditions of Settlement, Effect of Disapproval or Termination

27. **Effective Date**. The Effective Date of this Agreement shall be conditioned on the occurrence of all of the following events:

(a) Defendant no longer has any right under ¶ 31, below, to terminate this Agreement or, if Defendant does have such right, it has given written notice to Class Plaintiffs' Counsel that it will not exercise such right;

(b) the Court has finally approved the Settlement as described herein, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and has entered the Judgment; and

(c) the Final Approval Order and Judgment has become Final.

28. **Occurrence of Effective Date.** Upon the occurrence of all of the events referenced in ¶ 27, above, any and all remaining interest or right of Defendant in or to the Gross Settlement Fund, if any, shall be absolutely and forever extinguished, and the Gross Settlement Fund (less any Notice and Administrative Costs, Taxes or Tax Expenses, Escrow Agent Costs or any Fee and Expense Award paid) shall be transferred from the Escrow Agent to the Claims Administrator at the written direction of Class Plaintiffs' Counsel.

29. **Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 27, above, are not satisfied, then this Agreement shall be terminated, subject to and in accordance with ¶ 31, below, unless the Settling Parties mutually agree in writing to continue with it for a specified period of time.

30. **Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval Order, or the Judgment without material modification, or if this Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated, modified, or reversed, then this Agreement and the Settlement incorporated therein shall be terminated, unless all parties who are adversely affected thereby, in their sole discretion within thirty (30) days from the date of the mailing of such ruling to such parties, provide written notice to all other parties hereto of their intent to proceed with the Settlement under the terms of the Preliminary Approval Order, the Final Approval Order or the Judgment as modified by the Court or on appeal. Such notice may be provided on behalf of Class Plaintiffs and the Class by Class Plaintiffs' Counsel. No Settling Party shall have any obligation whatsoever to proceed under any terms other than substantially in

the form provided and agreed to herein; provided, however, that no order of the Court concerning any Fee and Expense Application or Distribution Plan, or any modification or reversal on appeal of such order, shall constitute grounds for termination of this Agreement by any Settling Party. Without limiting the foregoing, Defendant shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of the Action as to Defendant and full discharge of the Released Claims.

31. **Termination**. Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that the Settlement as described herein is not finally approved by the Court or the Judgment is reversed, vacated, or modified following any appeal taken therefrom, then:

(a) within three (3) business days after written notification of such event is sent by counsel for Defendant or Class Plaintiffs' Counsel to the Escrow Agent, the Gross Settlement Fund, including the Settlement Amount and all interest earned in the Settlement Fund and all payments disbursed, including all expenses, costs, excluding only (i) Notice and Administrative Costs that have either been properly disbursed or are due and owing pursuant to ¶¶ 5-6, above, (ii) Taxes and Tax Expenses that have been properly paid or that have accrued and will be properly payable at some later date, and (iii) Escrow Agent Costs that have either been properly disbursed or are due and owing (the sum of (i) – (iii) shall not exceed one million dollars ($1,000,000) for purposes of this paragraph), will be

refunded, reimbursed, and repaid by the Escrow Agent to Defendant; except that if this Agreement terminates pursuant to Paragraph 47(b) or because Class Plaintiffs fail to timely seek final approval of the Settlement, the entirety of the Gross Settlement Fund, including all interest earned on such amount while held in the escrow account (with no deductions for expenses incurred whatsoever) will be refunded, reimbursed, and repaid by the Escrow agent to Defendant within three (3) business days after receiving notice pursuant to this paragraph.

(b) the Escrow Agent or its designee shall apply for any tax refund owed to the Gross Settlement Fund and pay the proceeds to Defendant, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund;

(c) the Settling Parties shall be restored to their respective positions in the Action as of the Execution Date, with all of their respective legal claims and defenses, preserved as they existed on that date;

(d) the terms and provisions of this Agreement, with the exception of ¶¶ 10-11, 27-31, 33 and 36-37 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Action or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

(e) any Judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

H. No Admission of Liability

32. **Final and Complete Resolution.** The Settling Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Action, and it shall not be deemed an admission by any Settling Party as to the merits of any claim or defense or any allegation made in the Action.

33. **Use of Agreement as Evidence.** Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, of any allegation made in the Action, or of any wrongdoing or liability of Releasees; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Releasees may file this Agreement and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations described in this paragraph apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order or the Judgment.

I. Miscellaneous Provisions

34. **Defendant's Right to Communicate.** Class Plaintiffs' Counsel acknowledges and agrees that Defendant and Releasees have the right to communicate orally and in writing with, and to respond to inquiries from, Class Members not relating to this Settlement or the Action, including (without limitation): (i) communications between Class Members and representatives of Releasees whose responsibilities include client relations to the extent such communications are initiated by Class Members; (ii) communications between Class Members who are ongoing clients of Releasees, or who seek to become clients of Releasees; and (iii) communications that might be necessary to conduct Releasees' business.

35. **Voluntary Settlement.** The Settling Parties agree that the Settlement Amount and the other terms of the Settlement as described herein were negotiated in good faith by the Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel.

36. **Consent to Jurisdiction**. Defendant and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement.

37. **Resolution of Disputes; Retention of Exclusive Jurisdiction**. Any disputes between or among Defendant and any Class Member or Members (or their counsel) concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of this Agreement.

38. **Binding Effect**. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the

foregoing, each and every covenant and agreement herein by Class Plaintiffs, and Class Plaintiffs' Counsel shall be binding upon all Class Members.

39. **Authorization to Enter Settlement Agreement.** The undersigned representatives of Defendant represent that they are fully authorized to enter into and to execute this Agreement on behalf of Defendant. Class Plaintiffs' Counsel, on behalf of the Class Plaintiffs, represent that they are, subject to Court approval, expressly authorized to take all action required or permitted to be taken by or on behalf of this Class pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Class that they deem appropriate.

40. **Notices.** All notices under this Agreement shall be in writing. Each such notice shall be given either by (i) e-mail; (ii) hand delivery; (iii) registered or certified mail, return receipt requested, postage pre-paid; (iv) FedEx or similar overnight courier; or (v) facsimile and first class mail, postage pre-paid, and, if directed to any Class Member, shall be addressed to Class Plaintiffs' Counsel at their addresses set forth on the signature page hereof, and if directed to Defendant, shall be addressed to its attorneys at the address set forth on the signature pages hereof or such other addresses as Class Plaintiffs' Counsel or Defendant may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

41. **No Conflict Intended.** The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

42. **No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute,

case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

43. **Choice of Law**. This Agreement and the exhibit(s) hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles.

44. **Amendment; Waiver**. This Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

45. **Execution in Counterparts**. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

46. **Integrated Agreement**. This Agreement constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.

47. **Optional Termination of Agreement.** The Settlement may be terminated by Defendant in its sole discretion by written notice under the following circumstances:

(a) If Class Plaintiffs do not seek preliminary approval of the Settlement within forty-five (45) business days of the Execution Date, Defendant shall have the option to terminate the Settlement and to render this Agreement null and void, and the Escrow Agent shall return to Defendant the Gross Settlement Fund, without any reasonable expenses deductions, as provided in accordance with ¶ 31(a), above;

(b) Defendant shall have the option to terminate the Settlement and to render this Agreement null and void in the event that more than a certain percentage of the Class Members timely and validly request exclusion from the Class, as set forth in a separate agremenet (the "Supplemental Agreement") executed between Class Plaintiffs' Counsel and Defendant's counsel.

48. **Reservation of Rights**. This Agreement does not settle or compromise any claims by Class Plaintiffs or any Class Member asserted in the Action against any defendant or any potential defendant other than the Releasees. All rights of any Class Member against any other person or entity other than the Releasees are specifically reserved by Class Plaintiffs and the Class Members.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date set forth below.

Dated: _____

Class Plaintiffs' Counsel, on behalf of Class Plaintiffs individually and on behalf of the Class

By: _____

William A. Isaacson
wisaacson@bsfllp.com
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By: _____

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By: _____

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sard@susmangodfrey.com

Dated: 2/10/16

Société Générale

By: _____

Matthew D. Ingber
mingber@mayerbrown.com
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1221 Avenue of the Americas
New York, NY 10020
Tel: (212) 506-2500
Fax: (212) 262-1910

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date set forth below.

Dated: _____

Class Plaintiffs' Counsel, on behalf of Class Plaintiffs individually and on behalf of the Class

By: _____

William A. Isaacson
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By: _____

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By: _____

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IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date set forth below.

Dated: February 10, 2016

Class Plaintiffs' Counsel, on behalf of Class Plaintiffs individually and on behalf of the Class

By: _____

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Exhibit A

1. *Active Retirement Community, Inc., d/b/a Jefferson's Ferry* v. *Bank of America, N.A., et al.*, No. 10-8273
2. *City of Los Angeles* v. *Bank of America, N.A., et al.*, No. 08-10351
3. *City of Stockton* v. *Bank of America, N.A., et al.*, No. 08-10350
4. *County of San Diego* v. *Bank of America, N.A., et al.*, No. 09-1195
5. *County of San Mateo* v. *Bank of America, N.A., et al.*, No. 09-1196
6. *Contra Costa County* v. *Bank of America, N.A., et al.*, No. 09-1197
7. *Sacramento Municipal Utility District* v. *Bank of America, N.A., et al.*, No. 09-10103
8. *City of Riverside, et al.* v. *Bank of America, N.A., et al.*, No. 09-10102
9. *Los Angeles World Airports* v. *Bank of America, N.A., et al.*, No. 10-0627
10. *Sacramento Suburban Water District* v. *Bank of America, N.A., et al.*, No. 10-0629
11. *County of Tulare* v. *Bank of America, N.A., et al.*, No. 10-0628
12. *Redevelopment Agency of the City of Stockton, et al.* v. *Bank of America, N.A., et al.*, No. 10-0630
13. *Redevelopment Agency of the City and County of San Francisco* v. *Bank of America, N.A., et al.*, No. 10-4987
14. *City of Redwood City* v. *Bank of America, N.A., et al.*, No. 10-4988
15. *City of Richmond* v. *Bank of America, N.A., et al.*, No. 10-4989
16. *East Bay Municipal Utility District* v. *Bank of America, N.A., et al.*, No. 10-4990
17. *Kendal on Hudson, Inc.* v. *Bank of America, N.A., et al.*, No. 10-9496
18. *Los Angeles Unified School District* v. *Bank of America, N.A., et al.*, No. 10-9839
19. *Peconic Landing at Southhold, Inc.* v. *Bank of America, N.A., et al.*, No. 11-0241
20. *City of Oakland* v. *AIG Fin. Prods. Corp., et al.*, No. 08-6340
21. *County of Alameda* v. *AIG Fin. Prods. Corp., et al.*, No. 08-7034

22. *City of Fresno* v. *AIG Fin. Prods. Corp., et al.*, No. 08-7355

23. *Fresno County Fin. Auth.* v. *AIG Fin. Prods. Corp., et al.*, No. 09-1199

24. *East Bay Delta Housing & Finance Agency* v. *Bank of America, N.A., et al.*, No. 11-3651

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MUNICIPAL DERIVATIVES ANTITRUST LITIGATION	Master Docket No. 08 Civ. 2516 (VM) (GWG) MDL No. 1950
This Document Relates to: ALL ACTIONS	

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT AND APPROVING FORM OF NOTICE TO CLASS MEMBERS

WHEREAS, Class Plaintiffs' Counsel (as defined in the Settlement Agreement, dated February 10, 2016 ("Agreement")) have applied for an order preliminarily approving the terms and conditions of the Settlement with defendant Société Génerale, as set forth in the Agreement, together with the Exhibits annexed thereto;

WHEREAS, the Settlement requires, among other things, that all Released Claims against Releasees be settled and compromised;

WHEREAS, Defendant has joined in this application; and

WHEREAS, this Court having considered the Agreement and Exhibits annexed thereto, Class Plaintiffs' Motion for Preliminary Approval of the Settlement and all papers filed in support of such motion;

NOW, THEREFORE, pursuant to the Federal Rule of Civil Procedure 23, it is hereby ORDERED that:

1. The capitalized terms used herein shall have the meanings set forth in the Agreement.

2. The Court preliminarily approves the Settlement as set forth in the Agreement, including the releases contained therein, as being fair, reasonable and adequate to the Class, subject to the right of any Class Member to challenge the fairness, reasonableness or adequacy of the Agreement and to show cause, if any exists, why a final judgment dismissing the Action against Defendant, and ordering the release of the Released Claims against Releasees, should not be entered after due and adequate notice to the Class as set forth in the Agreement and after a hearing on final approval.

3. The Court finds that the Agreement was entered into at arm's length by highly experienced counsel and is sufficiently within the range of reasonableness that notice of the Agreement should be given as provided in the Agreement.

4. The Court conditionally certifies the Class (set forth herein) for purposes of the Settlement as to Defendant:

> All state, local and municipal government entities, independent government agencies and private entities that (i) purchased by negotiation, competitive bidding or auction municipal derivative transactions directly from Société Générale or any Alleged Provider Defendant or Alleged Provider Co-Conspirator, or (ii) purchased by negotiation, competitive bidding or auction municipal derivative transactions brokered by any Alleged Broker Defendant or Alleged Broker Co-Conspirator, at any time from January 1, 1992 through August 18, 2011, in the United States and its territories or for delivery in the United States or its territories, except that excluded are (a) Société Générale; and (b) any Alleged Provider Defendant, Alleged Provider Co-Conspirator, Alleged Broker Defendant, and Alleged

Broker Co-Conspirator. Also excluded from the class are any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

5. The Court finds that the certification of the Class for purposes of the Settlement as to Defendant is warranted in light of the Settlement because: (i) the Class is so numerous that joinder is impracticable; (ii) Class Plaintiffs' claims present common issues that are typical of the Class; (iii) Class Plaintiffs and Class Plaintiffs' Counsel will fairly and adequately represent the Class; and (iv) common issues predominate over any individual issues affecting the Class Members. The Court further finds that Class Plaintiffs' interests are aligned with the interests of all other Class Members. The Court also finds that resolution of this Action on a class basis for purposes of the Settlement as to Defendant is superior to other means of resolution.

6. The Court hereby appoints Class Plaintiffs' Counsel as counsel to the Class for purposes of the Settlement, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

7. Class Plaintiffs City of Baltimore, Maryland, and the Central Bucks School District will serve as representatives of the Class for purposes of the Settlement.

8. The Court appoints _____, a competent firm, as the Claims Administrator. The Claims Administrator shall be responsible for receiving requests for exclusion from the Class Members.

9. The Court approves the form of Notice to the Class attached as Exhibits ___ and ___ to the Motion for Preliminary Approval of the Settlement and directs class-wide notice be given in accordance with ¶¶ 5-6 of the Agreement.

10. Any Class Member can request exclusion from the Class on or before the date set forth in the Notice (MONTH, DATE, YEAR). Each Class Member wishing to exclude itself from the Class must individually sign and submit timely written notice to the designated address set forth in the Notice. The request for exclusion must clearly state (a) the Settlement Class Member's name, address, and telephone number; (b) all trade names or business names and addresses that the Settlement Class Member has used, as well as an subsidiaries or affiliates that have purchased by negotiation, competitive bidding or auction municipal derivatives from an Alleged Provider Co-Conspirator, or through an Alleged Broker Co-Conspirator, at any time from January 1,1992 through August 18, 2011 in the United States and its territories or for delivery in the United States and its territories that are also requesting exclusion; (c) a description of the municipal derivatives purchased by the Settlement Class Member that fall within the class definition (including, but not limited, to the identity of the provider and the broker, the date of the transaction, the type of transaction, any transaction identification numbers, and the notional amount of the transactions) to the extent such information is available; (d) the name of the Action ("In re Municipal Derivatives Antitrust Litigation"); and (e) a signed statement that the Settlement Class Member requests to be excluded from the Settlement Class. The request for exclusion shall not be effective unless it provides all of the required information and is postmarked as set forth in the Notice (MONTH, DATE, YEAR).

11. As of the date hereof, all proceedings in the Action as to Defendant shall be stayed and suspended until further order of the Court, except as may be necessary to implement the Settlement or comply with the terms of the Agreement.

12. All protective orders in force as of the date of this Order are hereby amended to apply to all materials and information provided by Defendant in connection with the Settlement (including but not limited to information with respect to the potential or actual Class Members).

13. The Court hereby schedules a hearing to occur on _____, 2016, at _____ a.m. in Courtroom _____ at _____ to determine whether (i) the proposed Settlement as set forth in the Agreement, should be finally approved as fair, reasonable and adequate pursuant to the Federal Rule of Civil Procedure 23; (ii) an order approving the Agreement and a Final Judgment should be entered; and (iii) the application of Class Plaintiffs' Counsel for an award of attorneys' fees and expenses in this matter should be approved. All papers in support of final approval of the Settlement shall be filed thirty (30) days before the fairness hearing. No later than twenty (20) days before the hearing, all papers shall be filed and served by objectors or persons other than the parties to the Action. No later than seven (7) days before the hearing, all relevant reply papers shall be filed and served by the parties to the Action.

14. Neither this Order, the Agreement, the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Agreement or Settlement is or may be used as an admission or evidence (i) of the validity of any claims, alleged wrongdoing or liability of Defendant or (ii) of any fault or omission of Defendant in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

15. Neither this Order, the Agreement, the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Agreement or Settlement is or may be used as an admission or evidence that the claims of Class Plaintiffs lacked merit in any proceeding against anyone other than Defendant in any court, administrative agency or other tribunal.

16. In the event that the Agreement is terminated in accordance with its provisions, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Agreement, and without prejudice to the status quo ante rights of Class Plaintiffs, Defendant and the Class Members.

17. No later than ten (10) days after the Motion for Preliminary Approval of the Settlement has been filed with the Court, Defendant will serve the Class Action Fairness Act ("CAFA") Notice on the Attorney General of the United States and the state attorneys general as required by 28 U.S.C. § 1715(b). Thereafter, Defendant will serve any supplemental CAFA Notice as appropriate.

ENTERED this __ day of _____ 2016.

_____

Hon. Victor Marrero

EXHIBIT 3

ELECTION BY ATTORNEY GENERAL TO PARTICIPATE IN SETTLEMENT WITH SOCIETE GENERALE.

The Attorney General of_____hereby elects to participate in the Settlement Agreement Among the Attorneys General of the States of Colorado, Connecticut, Florida, Idaho, Illinois, Iowa, Kansas, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, South Carolina, Tennessee, and Wisconsin and the Pennsylvania Office of Attorney General, and Societe Generale, dated _____, 2016 (Settlement Agreement) as a Participating Attorney General.